Members

Sen. R. Michael Young, Chairperson

Sen. Brent Steele Sen. James Arnold Sen. Lindel Hume Rep. Greg Steuerwald Rep. Jud McMillin Rep. Matt Pierce

Rep. Linda Lawson Larry Landis David Powell Commissioner Bruce Lemmon

Thor Miller Linda Brady

Hon. Stephen R. Heimann



CRIMINAL LAW AND SENTENCING POLICY STUDY COMMITTEE

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Authority: IC 2-5-32.5

MEETING MINUTES1

Meeting Date:

October 31, 2013

Meeting Time:

10:00 A.M.

Meeting Place:

State House, 200 W. Washington

St., Room 130

Meeting City:

Indianapolis, Indiana

Meeting Number:

. 5

Members Present:

Sen. R. Michael Young, Chairperson; Sen. Brent Steele; Sen. Lindel Hume; Rep. Greg Steuerwald; Rep. Jud McMillin; Rep. Matt Pierce; Rep. Linda Lawson; Larry Landis; David Powell; Commissioner Bruce Lemmon; Thor Miller; Linda Brady; Hon.

Stephen R. Heimann.

Members Absent:

Sen. James Arnold.

Senator Young called the meeting to order at 10:03 a.m.

I. Marion County Juvenile Detention Alternatives Initiative

Judge Marilyn Moores, Presiding Judge of the Marion Superior Court, Juvenile Division, described the court's Juvenile Detention Alternatives Initiative. (See Exhibits 1

These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at http://www.in.gov/legislative Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

and 2.)

In response to questions from Senator Young, Judge Moores testified that she was not sure if the methods used by the Juvenile Court to reduce recidivism would be effective with adult offenders. She also noted that adult courts are more punitive and provided less assistance for offenders to deal with underlying problems.

In response to a question from Randy Koester, Judge Moores stated that the court was not going to reinstitute bootcamps because the data clearly showed that they were not effective.

During Committee discussion, Judge Heimann stated that an Ohio study demonstrated that bootcamps caused the recidivism rate to increase. While many proponents believed that it would reduce recidivism by instilling military-style discipline, the end result was that bootcamp-trained juveniles made good tools for criminal gangs.

II. Underreporting of Crimes by Juveniles

Representative Hale testified that the Center for Disease Control has conducted studies showing that many crimes, especially sex crimes committed against girls, are significantly underreported. While official statistics show that one in six girls in Indiana have been raped or sexually assaulted, the number is actually higher because many of these crimes are simply not reported. Indiana has some of the worst data in the United States, but we do not know why Indiana's numbers are so bad.

A. Malea Crosby

Malea Crosby testified that she was raped while on a date when she was 16 years old. Her mother found a note describing the rape and told Ms. Crosby that it did not happen. During a visit to a doctor, the physician observed tearing and bruising but did not ask any additional questions. Ms. Crosby stated that these actions led her to think that the rape was somehow her fault, or that what happened was not real. She did not understand this dynamic until she went to therapy in her 30's.

Ms. Crosby summed up her reasons for not reporting the rape as: (1) she was afraid of not being believed; (2) she did not know that she could do something else; (3) she was afraid of being victimized again by the system; (4) because she cannot remember parts of the crime, she would have a hard time proving the rape; and (5) she had a general feeling that the rape was her fault because she voluntarily got into the back of the car.

In response to questions from Senator Young, Ms. Crosby testified that better education, at home and at school, would help increase the number of young victims who report their crimes. Ms. Crosby believes that young people need to know what kinds of relationships are appropriate.

B. Dr. Roberta Hibbard, Riley Hospital for Children

Dr. Roberta Hibbard, a pediatrician at Riley Hospital for Children, testified that she is involved in detecting child abuse and sees many kids under the age of sixteen who have been sexually assaulted.

Dr. Hibbard believes that kids frequently feel responsible for being assaulted and often are not even sure that they have been assaulted. They are afraid of intrusive investigations and afraid of outsiders knowing. They also feel blamed by the system.

Dr. Hibbard testified that it is important to make sure that service providers are well trained; if they are not, they will frighten kids. However, service providers also need to deal with false reporting situations, where the sexual activity was voluntary and the children are reporting it as a rape because they are afraid of their parents.

According to Dr. Hibbard, the most important issue after discovering a sexual assault is getting services to kids; failing to do so may lead to later mental health issues.

In response to a question from Senator Young concerning mandatory reporting, Dr. Hibbard testified that reporting is complicated because a child who is 14 or 15 year old and who has had consensual sexual intercourse may or may not be the victim of abuse or neglect, depending on the age of the child's partner. In addition, if a child does not perceive that the sexual contact is a crime, the child will not report it.

During Committee discussion, Representative Pierce stated that some cities have established locations (such as "Susie's Place" in Avon and Bloomington) where children can discuss possible sexual abuse. Interviews in these establishments are conducted by trained individuals who are not law enforcement officers, and the buildings are designed to resemble homes rather than institutional buildings. Representative Pierce believes that it might be helpful if this program were scaled up.

Dr. Hibbard testified that many counties do not have enough trained interviewers, but that it would be ideal if these programs could be expanded to additional counties with appropriate training and funding.

C. Anita Carpenter, Indiana Coalition against Sexual Assault

Anita Carpenter, CEO of the Indiana Coalition against Sexual Assault (INCASA), testified that INCASA works with rape crisis centers and law enforcement agencies and is aware of the underreporting problem. Ms. Carpenter stated that whenever INCASA makes a presentation in a school, they receive two or three additional sexual assault disclosures. Ms. Carpenter also noted that 40 counties provide no services for the victims of sex crimes.

In response to a question from Senator Young about how to improve reporting, Ms. Carpenter stated that sexual assault education is the most important step, and that schools should provide this. Parents also need to be educated.

In response to a question from Senator Young about programs in other states, Ms. Carpenter stated that while Indiana is ranked second highest in underreporting, as a practical matter Indiana is very close to numbers 3 through 20.

D. John Parrish-Sprowl, Ph.D., IUPUI School of Liberal Arts

Dr. Parrish-Sprowl, a professor at IUPUI who researches issues of domestic violence, testified that the first step in dealing with underreporting of sex crimes is to determine how much underreporting actually occurs. Dr. Parrish-Sprowl described a research program to investigate underreporting; Dr. Parrish-Sprowl believes that the best program would be multidisciplinary and combine GIS mapping with a variety of different surveys, focus groups, and one-on-one interviews.

In response to questions from Senator Young and Representative Pierce, Dr. Parrish-Sprowl testified that a research program like the one he described might cost \$50,000 - \$60,000 and could be conducted by a university, by some private organizations,

and, possibly, by the Indiana Department of Health.

The Committee recessed for lunch at 11:50 a.m. and reconvened at 1:05 p.m.

III. Final Report of the Recidivism Working Group

Representative Steuerwald presented the final report of the Recidivism Working Group to the Committee and noted that there is a strong consensus on the conclusions. (See Exhibit 3.) David Powell, Executive Director of the Indiana Prosecuting Attorneys Council, distributed the IPAC Report on Advisory Sentences and Suspendibility of Sentences. (See Exhibit 4.)

IV. Programs for Community Corrections and Probation

Jane Seigel, Executive Director of the Judicial Center, presented a proposed draft dealing with mental health and treatment programs offered in community corrections programs. (See Exhibit 5.)

Steve McCaffrey, President and CEO of Mental Health America of Indiana, presented a proposed draft dealing with mental health and treatment programs offered to persons on probation. (See Exhibit 6.)

In response to a question from Senator Young, Ms. Seigel explained that there is a difference between being addiction-free from detox as opposed to being addiction-free from treatment, but that a person who is addiction-free from detox (such as a person recently released from incarceration) might have a better chance at successfully completing a treatment program.

In response to a question from Senator Young, Ms. Seigel testified that the language in the proposed drafts is broad enough to implement programs similar to successful programs used in Texas and Michigan.

The Committee voted 11-0 to recommend the drafts and combine them into one bill.

IV. Preliminary Draft 3193

Larry Landis, Executive Director of the Indiana Public Defender Council, presented Preliminary Draft (PD) 3193, which changes the sentencing ranges for felonies. (See Exhibit 7 and Exhibit 8.)

Kelsey Kauffmann, a DePauw University Professor, testified that she is not opposed to the reduction of "passive" credit time, which offenders earn by behaving in prison, but that she is concerned about the reduction of educational credit time, which offenders earn by participating in educational programs. Dr. Kauffmann believes that the impetus to reduce educational credit time was spurred by genuine abuses, such as the Chris Wheat case, but that these abuses could be addressed without dramatically reducing the availability of educational credit time.

During Committee discussion, Representative Steuerwald stated that he intends to review how credit time was applied to sentences and will follow up with the Department of Correction. Mr. Koester noted that as offenders get closer to their release date, rules violations diminish because the offenders are more aware of the consequences.

Scott County Prosecutor Jason Mount testified that he opposes the sentencing ranges contained in PD 3193 because he believes that the sentencing ranges enacted in HEA 1006-2013 give courts and prosecutors more flexibility to deal with a wide variety of offenders. He also opposes changes to the credit time system established in HEA 1006 if those changes undermine the "truth-in-sentencing" elements of the credit time system.

The Committee did not take a vote on PD 3193.

V. Preliminary Draft 3175

Mr. Powell presented PD 3175, which bars a court from modifying a sentence (with certain exceptions) without the approval of the prosecuting attorney if more than 365 days have passed since the sentence was imposed. (See Exhibit 9.) Mr. Powell testified that this would return the law to the way it was before the enactment of HEA 1006-2013 and eliminate unlimited modifications.

During Committee discussion, Representative Pierce testified that he is uncomfortable with the prosecutorial veto, and Judge Heimann stated that 95% of the cases in his court are open pleas, where the judge has the discretion to impose the sentence. Senator Steele suggested that it might be appropriate to treat open sentences differently from sentences imposed pursuant to a plea agreement, and Mr. Landis stated that the sentence modification language passed in HEA 1006-2013 prohibits sentence modifications that would violate the terms of a binding plea agreement.

Karen Richards, Allen County Prosecuting Attorney, testified that most cases in her county are resolved with a binding or semi-binding plea agreement. Ms. Richards testified that she is particularly concerned that offenders will be able to repeatedly bring victims back to court for sentence modification hearings and thus repeatedly revictimize them.

During Committee discussion, Judge Heimann stated that 99.5% of sentence modification petitions are denied outright and that any judge could deny a sentence modification petition without hearing, both of which suggest that revictimization is not a significant issue. Representative Steuerwald suggested that it might be appropriate to limit the number of petitions, perhaps to one. Mr. Powell stated that victims who do not appear at a sentence modification hearing because they can not be located are also being revictimized because they no longer have their voice.

Deputy Attorney General David Miller testified that the attorney general supports the PD.

Marion County Public Defender Ashley Schneider testified that open placement pleas are common in her court. Judges often impose sentences, particularly in drug cases, where they would like to bring the defendant back after a few years and evaluate how they have done in the department of correction, with the idea of resentencing if they have made progress. The prosecutorial veto makes this impossible.

The Committee did not take a vote on PD 3175.

VI. Preliminary Draft 3248

Mr. Landis presented PD 3248, dealing with criminal gang activity. (See Exhibit 10.) Mr. Landis testified that the current law concerning criminal gang activity is overbroad and could include "any three guys hanging out together."

Dearborn and Ohio County Prosecuting Attorney Aaron Negangard testified that the criminal gang activity statute is an effective, critical tool for dealing with gangs.

Marion County Public Defender Kendal Gulbrandsen testified that in *Kelly v. State*, the Indiana Court of Appeals "hijacked" the gang statute by holding that any time three people get together to commit a crime, they constitute a criminal gang.

During Committee discussion, Representative McMillin testified that the statutory definition of "criminal gang" seems overbroad.

Andrew Cullen of the United Way of Indiana testified that the United Way has a workgroup that is attempting to tighten the criminal gang activity statute.

The Committee did not take a vote on PD 3248.

VII. Preliminary Draft 3197

Dearborn and Ohio County Prosecuting Attorney Negangard presented PD 3197, which increases the penalties for certain drug offenses. (See Exhibit 11.) Mr. Negangard testified that HEA 1006-2013 reduced the penalties for drug crimes too much. Prosecutors need high penalties for low level dealers in order to get to high level dealers. Longer sentences are also important so that people can get treatment. In addition, by increasing the amount of drug required to reach certain felony levels, the cost of to law enforcement increases: according to Mr. Negangard, raising the maximum drug amount from three grams to 28 grams makes cases too expensive to pursue.

In response to a question from Senator Young, Mr. Negangard testified that providing an enhancement for the sale of drug within 1,000 feet of a school is an important tool, and removing the requirement that there be a reasonable likelihood that a child was present would make these cases easier to prove.

During committee discussion, Senator Young stated that he was not sure why there should be an enhancement for selling drugs near a school at midnight, when no children are likely to be around. Representative Pierce stated that the 1,000 foot exclusion zone makes all of Marion County into an exclusion zone. Judge Heimann testified that because linear parks are included, his entire jurisdiction would also become an exclusion zone.

Miami County Prosecuting Attorney Bruce Embry testified that he believes that advisory sentences are not necessary, but that he would like them to be higher if they are going to be used. Mr. Embry also stated that he believes that the penalties are too low, particularly for methamphetamine offenses.

Marion County Public Defender Kyle Cassidy testified that the 1,000 foot exclusion limit is bad because it covers almost everywhere.

Marion County Public Defender Matthew Jeziorski testified that the pre-HEA 1006-2013 sentencing ranges led to 20 year sentences for people who sold \$20 in drugs.

Scott County Prosecuting Attorney Mount testified that prescription medication is a significant problem in Scott County, so he would like to see the penalties increased. Mr. Mount stated that it is often safer to arrest people dealing drugs near schools when children are not present.

Dr. Kauffman testified that to be effective, drug-free exclusion zones need to be small, clearly marked, and few in number.

Martin County Prosecuting Attorney Mike Steiner testified that methamphetamine laboratories are very dangerous due to the risk of explosion, and that the danger to innocent people is an important reason to have large exclusion zones.

The Committee did not take a vote on PD 3197.

VIII. Preliminary Draft 3179

Mr. Landis presented PD 3179, restricting the court's authority to impose consecutive sentences. (See Exhibit 12.) Mr. Landis testified that the appellate courts have gutted the existing statutory limitations concerning consecutive sentences, and he would like to see sentences ordered served consecutively only if the person committed crimes of violence.

In response to a question from Mr. Powell, Mr. Landis agreed that permitting consecutive sentences for the crime of burglary is also be acceptable.

The Committee did not take a vote on PD 3179.

IX. Preliminary Draft 3198

Mr. Powell presented PD 3198, which increases the number of crimes that are nonsuspendible. (See Exhibit 13.)

During Committee discussion, Mr. Landis stated that he believes judges should have the discretion to determine which sentences are suspendible.

The Committee did not take a vote on PD 3198.

X. Expungement

Representative Jud McMillin presented a proposed revision to Indiana's expungement statute. (See Exhibit 14.)

The Committee amended the draft by requiring that: (1) a sentence be successfully completed before a person can seek expungement; (2) the waiting period for the expungement of certain felonies run from the date the sentence is completed rather than from the date of conviction; (3) Bureau of Motor Vehicle records required for expungement be certified; (4) a person seeking expungement not have committed another crime; (5) the person has completed any term of probation or parole; and (6) the person prove that the person is entitled to expungement by clear and convincing evidence.

The Committee recommended adoption of the amended draft 9-1.

The Committee adjourned at 6:15 p.m.

Marion Superior Court Juvenile Division

Outcomes for Alternatives to Detention

Definition of Recidivism

- As a Juvenile Detention Alternatives Initiative Site, Marion County tracks recidivism in a specific way
- Youth arrested while on an Alternative to Detention during the processing of their case make up our reported recidivism data in the following slides.
- Our goal is to keep our overall recidivism rate below 15%

General Outcomes for 2012

Supervised Release	8.5	14.4
Curfew	6.6	19.9
Home Confinement	6.2	16.6
Evening Reporting	5.2	23.0
Day Reporting	3.0	13.6
Electronic Monitoring	3.3	16.6
Shelter Care	1.3	2.4
Total	5.6%	15.6%

Recidivism Rates for Alternatives to Detention 2013: Quarters 1-3

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Supervised Release	12.67	13.51	11.25	12.46%
Curfew	11.02	11.5	9.32	8.45%
Home Confinement	9.19	8.47	5.21	7.64%
Evening Reporting	22.72	13.33	14.89	16.16%
Day Reporting	33.33 (n=12)	20.00 (n=15)	37.5 (n=11)	26.31%
Electronic Monitoring	8.21	9.65	12.87	10.33%
Shelter Care	1.38	1.03	2.27	1.56%
Total	9.21%	10.08%	10.19%	9.85%

^{*}Recidivism is counted by delinquency arrests only, status offenses are not included.

Recidivism Summary

- Tracking recidivism quarterly for each alternative allows us to addresses issues quickly.
- Maintaining public safety is of the utmost importance and keeping re-offense rates low is a key in achieving that goal.

Presiding Judge, Marilyn A. Moores Chief Magistrate Gary Chavers Deputy Chief Probation Officer Christina Ball Juvenile Justice Advocate Jenny Young



Learning Objectives

- 1. Viewers will be able to list and define the five objectives of JDAI.
- 2. Viewers will be able to explain the purpose and value of data, transparency, and collaboration to achieve system reform.
- 3. Viewers will be able to define DMC and begin to understand how to ask the questions that will identify it in their systems.

What is JDAI?

- A system reform effort focused on eliminating the overuse of secure detention while ensuring public safety
 - Ensuring that the right kid is detained
- Data driven
- Increased collaboration with stakeholders
- Transparency in system where possible

JDAI is a Public Safety Initiative!



JDAI Objectives

- Eliminate the inappropriate or unnecessary use of secure detention;
- Minimize re-arrest and failure-to-appear rates pending adjudication;
- Ensure appropriate conditions of confinement in secure facilities;
- Redirect public finances to sustain successful reforms; and
- Reduce racial and ethnic disparities.



#1: "Collaboration"

#2: "Use of Data"

#3: "Objective Screenings Tools"

#4: "Alternatives to Secure Detention"

#5: "Expedited Case Processing"

#6: "Special Cases"

#7: "Eliminate Disproportionality"

#8: "Improve Conditions of Confinement"

8 Core Strategies of JDAI's Detention Reform

Detention Risk Assessment Instrument (DRAI)

- Measures risk of re-offense and risk of failing to appear
- Three categories: low (0-5), moderate (6-11), and high (12- above)
 - Low: Unconditional Release
 - Moderate: Release w/Conditions
 - High: Detain
- Points are given for Most Serious Offense,
 Delinquency History, and Aggravating Factors
- Points are subtracted for Mitigating Factors

Alternatives to Detention

- Programs designed to provide supervision in the community for youth pending adjudication
 - Ensure public safety
 - Improve outcomes for youth
- An average of 341 youth are supervised in alternatives to detention each day
- 3,633 youth were supervised in an alternative program during 2012
- Kids remain in alternative programs an average of 47 days

Current Alternatives

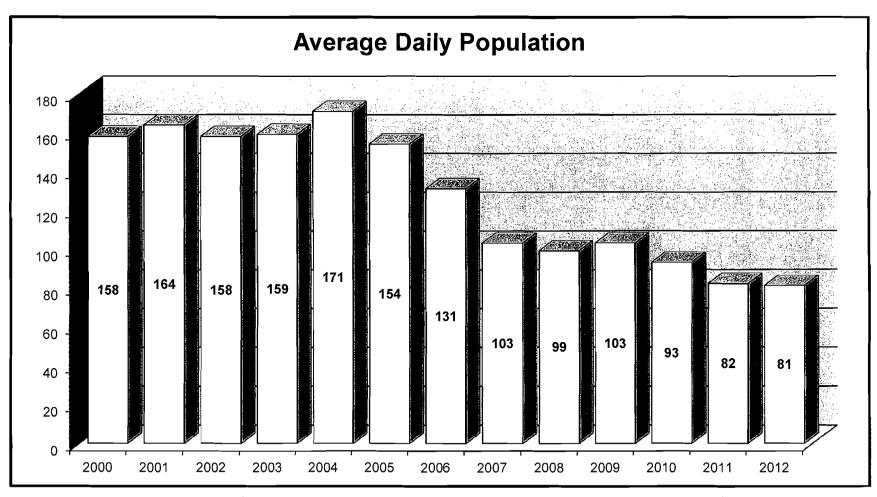
- Supervised Release
- Curfew
 - 5, 7, and 9 pm
- HomeConfinement
- Evening Reporting Centers

- Day Reporting
- ElectronicMonitoring
 - Home phone
 - Cell Unit
 - GPS
- Shelter Care

2012 Promising Outcomes

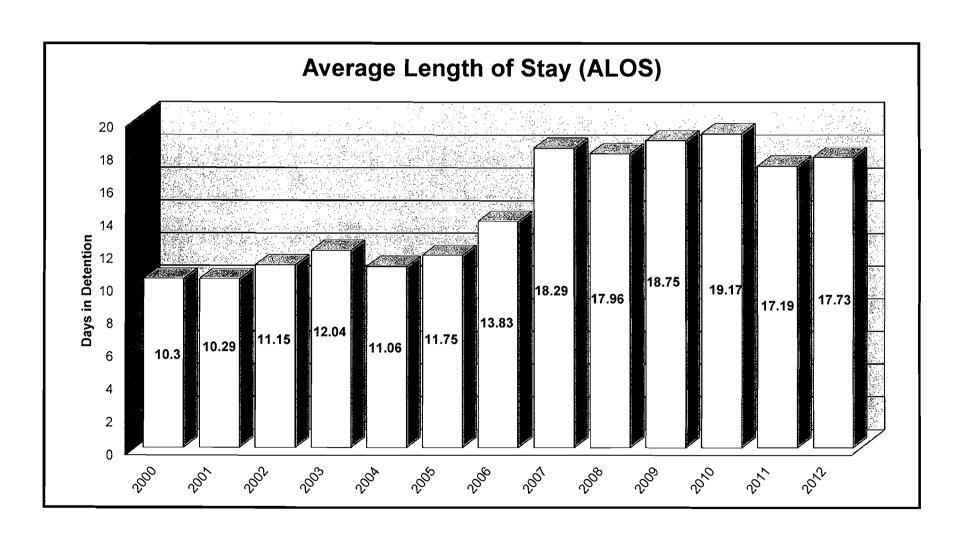
Release Condition	Failure to Appear Rate	Recidivism Rate
Supervised Release	8.5	14.4
Curfew	6.6	19.9
Home Confinement	6.2	16.6
Evening Reporting	5.2	23.0
Day Reporting	3.0	13.6
Electronic Monitoring	3.3	16.6
Shelter Care	1.3	2.4
Total	5.6%	15.6%

Detention Statistics

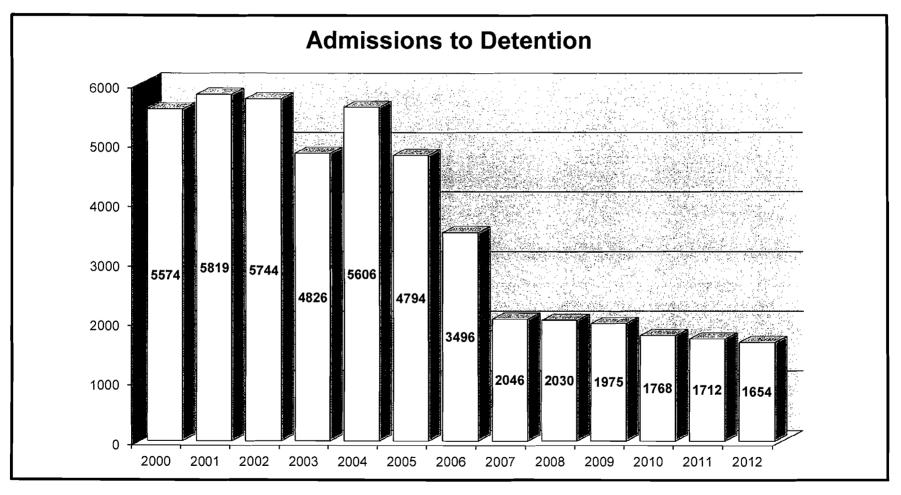


48.7% reduction in Average Daily Population

Detention Statistics



Detention Statistics



70.3% reduction in total admissions

2000 - 2012

Effect on Public Safety

- Total # of detention admissions:
 - 2005 = 4,794
 - 2012 = 1,654

65.5% REDUCTION

- Average daily population in secure detention:
 - 2005 = 154
 - 2012 = 81

47.4% REDUCTION

- Total # of delinquency referrals:
 - 2005 = 8,365
 - \bullet 2012 = 6,180

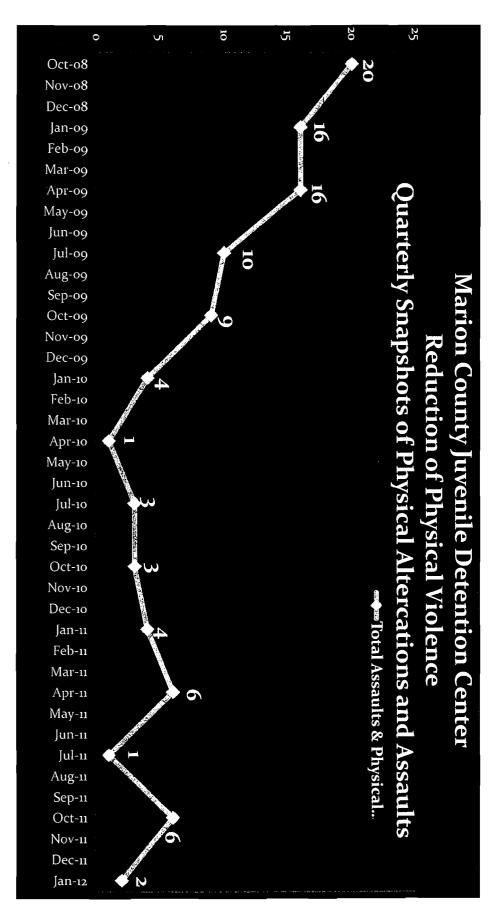
26.1% REDUCTION



Conditions of Confinement

- The Michigan Report
- Department of Justice Consent Decree began in 2008
- Completed all requirements to be released from the Consent Decree in October 2011
- C.H.A.P.T.E.R.S. Assessment completed every two to three years
- Consistently scoring almost perfect in DOC and OJJDP Audits
- Beginning the implementation of Performance Based Standards
- Piloting the new National ACA standards for Juvenile Detention Centers

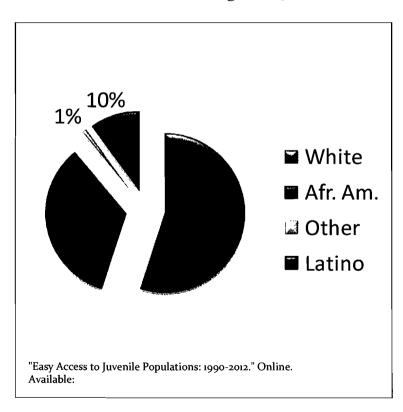
IDC Statistics



Marion County: DMC at a Glance

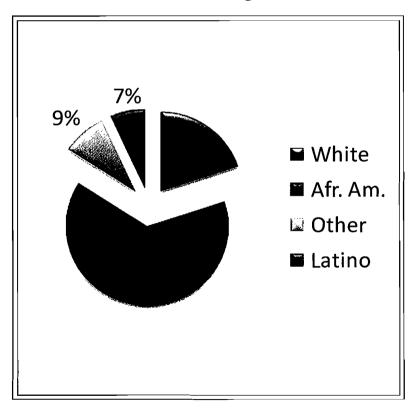
Youth Population

2012 Data for Youth Ages 12-17 Years



Detention Population

2012 ADP for Youth Ages 12-17 Years



Efforts to Reduce DMC

- Relationship with the W. Haywood Burns Institute began in 2010
- Now relying on Data and using it correctly to direct action
- Identified the three primary drivers of detention for Youth of Color:
 - Burglary, Violations of Probation and Release, and FTAs
- Community Engagement and Collaboration is a primary focus
 - IMPD Training
 - School Collaborative Project
 - Youth Justice History Curriculum



Final Thoughts

- JDAI is not a project or program
- Collaboration and transparency are required for success
- Difficult discussions among all stakeholders will be necessary
- Data is the great equalizer

Our community and our youth are worth it!



Questions...?

• For more information please contact:

Michelle Tennell

Statewide JDAI Director

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Cell Phone: 317-417-8370

Office Phone: 317-232-1313

October 26, 2013

The Honorable R. Michael Young Chairman, Criminal Law & Sentencing Policy Study Committee Indiana State House Indianapolis, Indiana 46204

Re: Report of the Working Group on Recidivism to the Committee

Dear Chairman Young:

I am pleased to present the attached report put together by our working group reviewing the subject of recidivism in the criminal justice system in Indiana. Our group has worked diligently over the past several months, analyzing studies, gathering data, and reaching out to various sources to provide you and the committee with the most thorough and highest quality report for consideration.

In the report, you will find a summary of our findings, recommendations, and key facts and statistics, along with a list of references and sources, most of which the committee has already reviewed or heard through testimony.

Most of all, I have been especially pleased with the bi-partisan, and selfless team effort put forth by our group, each member of which brings to the table its own specialized knowledge and valuable input. The team members shared an essential quality, which was to bring to bear his or her best information, creativity and thought processes in order to make a positive impact, and change to the criminal justice system in Indiana by lowering recidivism, impacting lives in a positive way by addressing addiction/mental health and wrap-around services, and to save the state and local units substantial costs.

We hope that the committee finds this report on recidivism to be of great value and we ask for its support of the measures outlined herein both now and throughout the next two legislative sessions, through which we believe significant changes can be made for the betterment of Indiana.

Sincerely.

Greg Stenerwald

Chair, Working Group on Recidivism

Cc: Members of the Criminal Law & Sentencing Policy Study Committee

Report to the Criminal Law & Sentencing Policy Study Committee

Chaired by the Honorable R. Michael Young Working Group on Recidivism

Chaired by the Honorable Greg Steuerwald

Members of the Working Group on Recidivism

The Honorable Greg Steuerwald, Chairman of the Working Group

Indiana Prosecuting Attorneys Council—David Powell, Executive Director & Jennifer Thuma, Legislative Liaison & Public Information Officer

Indiana Public Defender Council—Larry Landis, Executive Director

Steve McCaffrey, President & Chief Executive Officer, Mental Health America of Indiana

Linda Grove-Paul, Executive Director, Centerstone

Mary Allen, Executive Director, Indiana Criminal Justice Agency

Jane Seigel, Executive Director, Indiana Judicial Center

Jennifer Bauer, Staff Attorney, Indiana Judicial Center

Randy Koester, Deputy Commissioner, Indiana Department of Correction

Tim Brown, Legislative Liaison, Indiana Department of Correction

Bill Watson, Director, Community Corrections, Department of Correction

Linda Brady, President of the Probation Association of Indiana

Steve Luce, Executive Director, Indiana Sheriff's Association

Additional Individuals who provided Support or Assistance: Mark Goodpaster, (Legislative Services Agency), Andy Hedges (Legislative Services Agency), Aaron Garner (Department of Correction), Leah Raider (Office of Management & Budget), Christina Trexler (Governor's Office).

Overview

Charge to the Working Group: House Enrolled Act 1006 (Criminal Code revisions passed in the 2013 legislative session) directed that the topic of recidivism be studied during the 2013 interim. (See attached language from HEA 1006). Senator Mike Young, Chairman of the bipartisan Indiana Criminal Law & Sentencing Policy Study Committee, then assigned leadership on this issue to Rep. Greg Steuerwald, author of HEA 1006 and member of the study committee, to form a working group to study the issue and make recommendations to the committee.

The working group began as an ad hoc, informal team, with the addition of members as the study progressed. The genesis of the group began with the Indiana Prosecuting Attorneys Council, Public Defender Council, Indiana Criminal Justice Institute, the Indiana Judicial Center and Mental Health of America. As this group met to discuss and study the issue of recidivism, the vision of the team grew to include the groups and members listed above. This is critical to note because the core working group realized that the issue is not only complex, but spans a number of different disciplines, organizations, government units, and funding streams. The working group believes that this cooperative spirit and sharing of ideas across disciplines must continue as programming, funding and details of efforts to reduce recidivism move forward both at the state and local levels. The group believes that by breaking down existing silos or at least ensuring that the silos are linked together sufficiently to produce positive results is key to successful efforts to reduce recidivism.

The working group also strongly recommends and believes that coordination and cooperation between state and local units is essential. The group recognizes that local units have creative ideas, which if fostered by the state, can lead to solutions through collaboration.

The working group gathered evidence, data and research, showing that Indiana can reduce recidivism and save substantial money to state and local units of government, by funding addiction treatment/mental health and wrap-around services.

In Marion County, a 1% reduction in recidivism (46 people per year) would save the county over \$1 million per year. An example of a successful program identified by the working group showed a decrease of over 20% in recidivism at a cost of \$1200 per offender (the cost of 12 days at the DOC). The average daily cost to house a prisoner at a state facility (and DOC houses only 10% of offender population—remaining 90% are in local jails and in local

programs) is over \$100 per day per offender (operating and capital costs). Thus a reduction in recidivism would be a tremendous savings to state and local governments.

Summary of Findings

Overarching Finding: The State of Indiana must focus resources in a strategic manner on addiction treatment, mental health, wrap around services and/or cognitive programs, if it is to be successful in lowering the rate of recidivism. Recidivism is directly tied to drug & alcohol addictions and mental health issues. The vast majority of recidivists cycling in and out of both the state prison system and local correction programs are low level offenders (Class D felons—Level 6 felonies) who are addicts. They steal, burglarize and commit crimes to fund their addictions. Individuals with addictions and/or mental health issues are very likely to become involved with the criminal justice system at some point in their lives. Additionally, mental health & addiction are closely tied together in many instances.

By focusing resources on the front end, the working group finds through its research that state government and local units can actually **save money** if the programs are structured correctly, certified through Department of Mental Health and are measured with metrics for success. The working group members strongly agree that any dollar spent must save state and local units more than a dollar. The working group believes through its study and information gathering processes, that with well managed programs with results which are measured on a regular basis and whose results are accountable, that a potentially tremendous cost savings exists.

Lack of Addiction Treatment & Mental Health Services: The working group finds that a dearth of services across the State of Indiana exists both for indigent persons and sometimes even for those who can afford to pay. For those who are indigent, a complete lack of services exists.

Successful Programs: Do successful, proven programs exist to reduce recidivism which also actually save money? Yes; examples of successful programs using evidence based practice exist, both here in Indiana and in other states. Examples are outlined below.

Key Facts & Statistics—Framework of Recidivism

The lens through which the recidivism discussion must be based is framed by the following foundations:

- 52% of DOC Admissions are for new crimes—of those an incredible 70% are Drug and Theft Related
- 48% of DOC Admissions are for probation/parole violations.
 - 48% of probation/parole violations are NOT for new crimes—they are for TECHNICAL violations—i.e. missing multiple appointments, absconding from supervision, drug screen testing and other such issues.
 - An additional factor resulting in probation/parole revocations is an unclean drug screen. With no treatment services after release, falling back to addiction is not surprising and is very predictable. Relapse, even with treatment, is part of recovery, from addiction.

In Marion County—Recidivism rate is even higher:

- 51.6% released from state institutions recidivate
- 74% of those returning to prison have not committed a new offense—technical violations of probation or parole were committed (i.e. missing an appointment).

Addiction & Mental Health in the Criminal Justice System

It is helpful to have a basis of understanding about both addiction and mental health and why these issues are closely tied to the vast majority of individuals in the criminal justice system.

Self-Medicating Mental Health Conditions: Individuals with mental health issues (bipolar disorder, schizophrenia, etc.,) often "self-medicate" by taking unauthorized and illegal drugs or by abusing alcohol to help "control" their mania, depression, or other condition. Thus individuals with mental health conditions frequently become addicted to drugs/alcohol.

- Addictions: While the individual initially makes a choice to abuse drugs or alcohol, once addicted, the individual no longer has physical control over the drugs or alcohol. The drugs or alcohol are in control because a part of the brain is turned on like a light switch. (See attached presentation by Dr. Chambers on Addictions & Mental Health).
- Interaction with Criminal Justice System: By taking 1 or both of the conditions above, where the person is either illegally buying drugs to fund an addiction, or stealing to obtain the money needed to fund the habit, driving while drunk, or any number of other likely illegal activities, the person is a prime candidate for entry into the criminal justice system and eventual recidivism over time.

The State Prison Population—Who makes up the Prison Population?

In understanding the issues above, it is also helpful to have a basic understanding of what categories of crimes individuals are in prisons and local jails, keeping in mind that only 10% of those incarcerated are actually in the state prison system—the remainder is in local jails and community corrections. 90% of felons remain in local jails.

These are the individuals received in 2012 at the DOC Reception Center:

- Murder: 82
- Class A Felonies (very serious violent crimes) 514
- Class B Felonies 3772
- Class C Felonies 3571
- Class D Felonies 6296 (The majority of the crimes committed by this group are drug and theft related—these issues are tied together). The question is—how can we impact this group in order to provide treatment which would save the state and local government money in the long run and to help create a better society?)

Recommendations & Ideas

Probation: The working group determined that far too many offenders are placed on probation and these offenders are clogging up the system unnecessarily. Local corrections

systems rely substantially upon probation fees for funding, thus almost all offenders are placed on probation. The offenders who can most afford to pay are usually the offenders who do not need probation. Many of these offenders do not need to be on probation at all.

Additionally, 48% of those on probation or parole have their status revoked and are sent back to DOC for technical violations. The possibility for an incredible cost savings exists if this problem is addressed.

Parole: The working group recommends that parole be studied further. Parole is needed, especially because sex offenders are often monitored through parole. The working group does think however, that parole generally would benefit from further review.

Credit Time & Home Detention/Work Release: Credit time should be consistent between home detention as a direct commitment and as a condition of probation. Clean-up of language in HEA 1006 needs to be done to ensure that credit for home detention is day for day. Statutory language or policy on deprivation of credit time for home detention as a condition of probation is needed. It could give the judge authority to conduct a hearing or delegate to a conduct adjustment board these decisions. Work release should reflect change in credit time and should be consistent between DOC commitment and DOC work release.

<u>Several Pronged Approach to Address Addiction/Mental Health & Wrap-Around Treatment Services</u>:

The Working Group recommends adopting an approach with several prongs, each with oversight, accountability measures, and a reporting structure. It recognizes that "one size does not fit all" in that different communities have varying needs and that allowing for competition and creativity at the local level will create a well-spring of ideas and thought.

The working group recommends that grants, apportioned through the funding streams largely already in place below, would be a viable way in which funds could be tracked, measured and reviewed for success.

Certified programs through DMHA: The working group strongly recommends that funding only be granted to programs certified through an existing structure (Department of Mental Health). The group recommends that no funding be provided to programs without this certification, to ensure results.

Metrics: The group recommends that metrics be established to measure the success of each program funded through the state and that these metrics be standard and a report provided back to the Budget Committee on an annual basis. The report should include an analysis of each program and an analysis county by county.

4 Funding Streams:

Current structures exist to fund programs. These are as follows:

• Indiana Sheriffs: Sheriffs are ideally positioned to operate some programs at local jails. Currently monies which provide for housing of DOC inmates in local prisons are not directed to the sheriff but instead are allocated to the county, which often uses the monies for building projects and other similar non-correction program related tasks. Allocating these monies directly to the sheriffs to operate programming for mental health and addiction treatment would be beneficial because the sheriffs are in a position to spot and be able to help solve problems early in an offender's brush with the law. Sheriffs should be given the ability to serve not just in a law enforcement role, but to become creative problem solvers at the local level.

The sheriffs in Indiana have a long standing partnership with the DOC in housing state inmates. Rehabilitation is essential at the first opportunity when an offender enters the criminal justice system. This is usually done at the local jail. The Indiana Sheriff's Association as well as the working group support programming at the first opportunity when an offender is introduced into the system. The overall goal is to get the offender back into the community to be a productive member of society. Additionally, the sheriff is in a very good position to administer programming because the sheriff often knows the offenders/the local families and the actual problems/issues which in many instances is an advantage to help turn an offender's life around. The ISA and this working group recommends that 25% of the revenue paid directly to counties for housing DOC offenders be dedicated to the county sheriff for use in treating offenders in jail by implementing addiction and mental health programs.

 Community Corrections: Community Corrections is able currently to meet only approximately 30% of the need for addiction/mental health services. Additional

(2) Savings Realized Over Time by Successful Programs

 By successfully treating drug addicts and mental health illnesses, savings will be realized thus further funding programs

Example: Centerstone programming cost an average of \$1200 per offender for wraparound, drug treatment and mental health assistance in total. Some offenders required more services (and thus are more expensive) while others required few services (and therefore were less expensive). Center Stone's rate of recidivism is 29.6 % as compared to the state average of By spending \$1200 per offender upon release, the state avoids a much higher cost should the person recidivate. (\$1200 equals approximately 12 days at the DOC). (\$100 per day per offender multiplied by 12 days)

Example: RecycleForce Program: Established private business in operation for a number of years--Recidivism rate is 17.67% (Provides jobs to offenders)

(3) Current Savings May Be Realized by Implementation of HEA 1006 Depending Upon Outcome of 2 Studies:

- In 2013, 2 differing conclusions regarding the impact of HEA 1006 on the DOC were produced. The Legislative Services Agency, in its fiscal note of 2013, outlines a clear cost savings to the DOC over the next 10 years, largely because of the decrease in drug penalties. If this is the case, then up front start up money will exist for a significant period of years, to fund programs. The state DOC interpreted the impact of HEA 1006 to be negative to its operations.
- Because of the divergent views on the fiscal analysis, additional monies may exist at the state level to help fund programs at the local levels. Regardless, there is agreement amongst the working group that local units will need additional funding because of the realignment of the prison system under HEA 1006.
- (4) Alcohol Tax: The working group recognizes the opposition that exists from the alcohol lobby in broaching the subject of an increase in the alcohol tax and also recognizes that these forces are formidable.

However, the working group believes that consideration to raising this tax should be discussed. Alcohol taxes have not been increased since 1981---over 30 years of no increase to alcohol

taxes. On the other hand, almost all other taxes in Indiana have been raised since that time. Why is the alcohol tax exempt? It is helpful to consider the following:

- A one cent (1 penny) increase on the tax on a 6 pack of beer would result in approximately \$30 million in revenue to Indiana per year
- Indiana alcohol taxes are by far the lowest when compared to the national average:
 - Spirits (Indiana 3 cents compared to national average of 12 cents)
 - Wine (Indiana 2 cents compared to national average of 4 cents)
 - Beer (Indiana 1 cent compared to national average of 5 cents)
- 13% of the alcohol tax currently is dedicated to treatment of addiction, thus a precedent is set which makes logical sense.

References Used & Attached

- (1) Marion County Study on Recidivism (2013)
- (2) Stanford Study on Realignment of California's Prison System (2013)
- (3) Center Stone Presentation to Study Committee (September 26, 2013)
- (4) University of Cincinnati Presentation (September 26, 2013)
- (5) Indiana Prosecuting Attorneys Council Presentation on Recidivism to Study Committee (See DOC and Probation Statistics) (September 26, 2013)
- (6) Alcohol Tax Fiscal Numbers (Comparison to Other States, Break-Down of Revenue & Funding Sources, etc): Mental Health Association of America & Indiana Criminal Justice Institute
- (7) Scope of Work—Applied Research Services of Georgia (Study of impact on the state DOC of HEA 1006)
- (8) Scope of Work—AIR (Dr. Jarjoura—study of local impact of HEA 1006)
- (9) House Enrolled Act 1006—Language referencing subject of study for interim committee
- (10) Per Diem Daily Cost of Housing Prisoners in State Facilities (DOC 2011-2012 Report)
- (11) Presentation—Dr. Chambers (2012)

IPAC Report on Advisory Sentences and Suspendability of Sentences

Criminal Law and Sentencing Policy Study Committee

__day, September ___, 2013

MISSION

Study and Make Recommendations Concerning:

I. ADVISORY SENTENCES

HEA 1006 -- Section 683 (a)(2)

II. SUSPENDABILITY OF SENTENCES
HEA 1006 oo Section 683 (a)(3)

AGENDA

- I. Advisory Sentences
 - I. Current Code
 - II. HEA 1006
 - III. Proposal Public Safety Priorities
- II. Suspendability of Sentences (Prison Terms)
 - I. Current Code
 - II. HEA 1006
 - III. Proposal Public Safety Priorities

Advisory Sentences:

Current Code

- History (*Presumptive* Sentences preceded *Advisory* Sentences)
 - 1977- 2005: presumptive sentences were the sentencing baseline
 - Sentencing judge required to start at presumptive sentence, weigh aggravating and mitigating circumstances, and determine sentence
 - Apprendi v. New Jersey, 530 US 466 (2000); Blakely v. Washington, 542 US 296 (2004)
 - These two cases ended presumptive sentences as the sentencing baseline Indiana Law had to change

Advisory Sentences: Current Code

- History
 - Advisory Sentencing scheme created by Indiana Legislature in 2005 in response
 - An advisory sentence is a voluntary guideline that a trial judge may use in sentencing an offender
 - Aggravating and mitigating circumstances still exist, however, they are used only for purposes of appellate review of the sentence
 - Aggravating and mitigating circumstances may be considered by the judge in determining whether a sentence will run concurrently or consecutively
 - Judge is not required to weigh aggravators and mitigators to determine the sentence

Advisory Sentences: Current Code

- "Advisory sentence" is defined in IC 35-50-2-1.3
 - A guideline sentence that the court may *voluntarily* consider as a *midpoint* between the maximum sentence and the minimum sentence
 - Neither current code or HEA 1006 set advisory sentences as the midpoint creates confusion
 - The court is not required to use the advisory sentence except for:
 - Consecutive sentences
 - Habitual offenders
 - Repeat sex offenders

Advisory Sentences: HEA 1006

• Should advisory sentences be eliminated?

Level	<u>Minimum</u>	Advisony	<u>Maximu</u> um
Murder	45	55	65
Level 1	20	30	50
Level 2	10	17.5	30
Level 3	3	6	20
Level 4	2	4	12
Level 5	<u> </u>	2	6
Level 6	6 months	1	2.5

Advisory Sentences:

Proposal

- If we keep advisory sentences, what should they look like?
 - Follow the definition and go to the midpoint?

<u>Level</u>	<u>Main imaguma</u>	· · · · · · · · · · · · · · · · · · ·	<u> IIDPOINT</u>	Maximum
Murder	45	55	55	65
Level 1	20	30	35	50
Level 2	10	17.5	20	30
Level 3	3	5	11.5	20
Level 4	2	4	7	12
Level 5	1	2	3.5	6
Level 6	6 months	<u>"</u>	1.5	2.5

- HEA 1006 does not change the language which defines an advisory sentence (IC 35-50-2-1.3)
- PROSECUTORS PREFER A REPEAL OF THE ADVISORY SENTENCE SCHEME
- How do we do this?
 - REPEAL 35-50-2-1.3 (definition)
 - REPEAL 35-31.5-2-10 (definition)
 - AMEND penalty provisions for each level of felony by removing advisory sentence language

- How do we eliminate advisory sentences?
 - REMOVE the limitation regarding consecutive sentences in IC 35-50-1-2(b)
 - REMOVE the sentence enhancement calculation based upon advisory sentence in repeat sexual offender IC 35-50-2-14
 - REPEAL definition of "recommendation" defined in IC 35-31.5-2-272 a proposal that is part of a plea agreement made to the court that dismisses a felony charge or allows the defendant to receive less than the *advisory* if the defendant pleads to a felony.
- That's it!

- Is the elimination of advisory sentences good public policy?
 - Advisory sentence are no longer a starting point
 - Judges are not required to use stated aggravating and mitigating circumstances to justify a deviation from an advisory sentence
 - Creates an impression with the sentencing judge that the Indiana General Assembly endorses the advisory sentence as the appropriate sentence
 - **DANGER**: A de facto violation of *Blakely*
 - Better practice is elimination of the advisory sentence

• If we keep advisory sentences, what should they look like?

<u>Level</u> Murder	<u>Minimum</u> 45	PROS REC	<u>Advisory</u> 55	PROS REC 55	<u>Maximum</u> 65
Level 1	20		30	30	50
Level 2	10		17.5	17.5	30
Level 3	3	<u>6</u>	5	10	20
Level 4	2	4	4	<u>8</u>	12
Level 5	<u>.1</u>	<u>2</u>	2	4	6
Level 6	6 month	ıs.	1	1	2.5

Suspendibility of Sentences (Prison Terms):

Current Code

- IC 35-50-2-2 (2 categories)
 - Prior felony conviction minimum nonsuspendible.
 - Class A and B felony: no time limit
 - Class C felony: prior felony conviction w/in 7 years
 - Class D felony: prior felony conviction w/in 3 years

Suspendibility of Sentences (Prison Terms):

Current Code

- IC 35-50-2-2 (2 categories)
 - List of Offenses with a minimum nonsuspendible prison term – no criminal history
 - 30 offenses
 - Examples
 - Murder, rape, kidnapping, a number of offenses that involve deadly weapons, and a number of class A felonies
 - See handout

Suspendibility of Sentences (Prison Terms): HEA 1006

- IC 35-50-2-2.2 (2 categories)
 - 1. Prior felony conviction minimum nonsuspendible.
 - Level 1 and Level 2 felonies (current class A felonies)
 - List of Offenses minimum nonsuspendible with no criminal history
 - One offense: MURDER
 - All other felonies are completely suspendible
- This is a major change from current law

Suspendibility of Sentences (Prison Ferms):

Proposal

- What should Indiana's policy on suspendibility look like?
 - Prior felony conviction minimum nonsuspendible.
 - Level 2 and 3
 - Level 4 and 5 if the prior felony if less than 10 years has passed since the defendant completed the sentence

Suspendibility of Sentences (Prison Terms):

Proposal

- What should our policy on suspendibility look like?
 - 2. List of Offenses minimum nonsuspendible with no criminal history
 - Murder
 - Level 1 felony offenses, the heinous nine.
 - (1) Attempted murder; (2) conspiracy to commit murder resulting in death; (3) aggravated battery (death of a child under 14); (4) rape (SBI, DW, drugged victim); (5) child molesting and (6) sexual misconduct with a minor (child under 12 with certain circumstances); (7) burglary (dwelling and SBI); (8) disarming a law enforcement officer resulting in death of the officer; (9) neglect of a dependent resulting in death of a child under 14

Suspendibility of Sentences (Prison Terms): Proposal

• Be mindful. The Criminal Code Evaluation Commission Working Group recommended no changes to 35-50-2-2 during its review of the Indiana Criminal Code.

Suspendibility of Sentences (Term of Imprisonment): Four Unresolved Issues

- I.C. 35-50-2-2.1 (Juvenile delinquency)
- Probation question
- Sentence v. Term of Imprisonment (Term of Art)
- Suspendibility of other enhancements
 - Gang IC 35-50-2-15
 - Habitual IC 35-50-2-8
 - Firearm IC 35-50-2-11; IC 35-50-2-13
 - Repeat Sex Offender IC 35-50-2-14

Sentences and Suspendability **IPAC** Report on Advisory of Sentences

Questions?

IPAC Report on Advisory Sentences and Suspendability of Sentences

Criminal Law and Sentencing Policy Study
Committee

__day, September ___, 2013

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Proposal

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 - Repeat Sex Offender IC 35-50-2-14

Sentences and Suspendability IPAC Report on Advisory of Sentences

Questions?

Mental health and addiction forensic treatment services draft. For committee discussion.

I	SECTION 1. IC 11-12-3.8 IS ADDED TO THE INDIANA CODE AS A NEW
2	CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]:
3	Chapter 3.8. Mental Health and Addiction Forensic Treatment Services
4	Sec. 1. As used in this chapter, "mental health and addiction forensic treatment
5	services" means evidence based treatment and recovery wraparound support services
6	provided to individuals who are at risk of entering the criminal justice system. The term
7	includes:
8	(1) mental health and substance abuse treatment;
9	(2) vocational services;
10	(3) housing assistance;
11	(4) community support services;
12	(5) care coordination; and
13	(6) transportation assistance.
14	Sec. 2. An individual is eligible for mental health and addiction forensic treatment
15	services if the individual is:
16	(1) a member of a household with an annual income that does not exceed
17	two hundred percent (200%) of the federal poverty level;
18	(2) resident of Indiana;
19	(3) at least eighteen (18) years of age; and
20	(4) at risk of entering the criminal justice system.
21	Sec. 3. Mental health and addiction forensic treatment services may only be
22	administered or coordinated by a provider certified by the division of mental health and
23	addiction.
24	Sec. 4. (a) As used in this section, "account" refers to the mental health and
25	addiction forensic treatment services account established in subsection (b).
26	(b) The mental health and addiction forensic treatment services account within the
27	state general fund is established for the purpose of providing grants or vouchers for the
28	provision of mental health and addiction forensic treatment services. The account shall be
29	administered by the division of mental health and addiction. Money in the account shall be
30	used to fund grants and vouchers under this chapter.
31	(c) The account consists of:
32	(1) appropriations made by the general assembly;
33	(2) grants; and
34	(3) gifts and bequests.
35	(d) The expenses of administering the account shall be paid from money in the
36	account.
37	(e) The treasurer of state shall invest the money in the account not currently needed

1	to meet the obligations of the account in the same manner as other public money may be
2	invested. Interest that accrues from these investments shall be deposited in the account.
3	(f) Money in the account is continually appropriated to carry out the purposes of
4	this chapter.

(g) Money in the account at the end of a state fiscal year does not revert to the state general fund.

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Community corrections draft. For committee discussion.

1	SECTION 1. IC 11-12-1-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2	JULY 1, 2014]: Sec. 2.5. (a) The community corrections programs described in section 2 of this
3	chapter may include the following:
4	(1) Residential or work release programs.
5	(2) House arrest, home detention, and electronic monitoring programs.
6	(3) Community restitution or service programs.
7	(4) Victim-offender reconciliation programs.
8	(5) Jail services programs.
9	(6) Jail work crews.
10	(7) Community work crews.
l j	(8) Juvenile detention alternative programs.
12	(9) Day reporting programs:
13	(10) Faith based programs.
14	(11) Other community corrections programs approved by the department.
15	shall use evidence-based services, programs, and practices that reduce the risk for
16	recidivism among persons who participate in the community corrections programs.
17	(b) The community corrections board may also coordinate and or operate:
18	(1) educational;
19	(2) mental health;
20	(3) drug or alcohol abuse counseling: and
21	(4) housing:
22	programs. as a part of any of these programs or In addition, the board may provide
23	supervision services for persons described in section 2 of this chapter.
24	SECTION 2. IC 11-12-2-1. AS AMENDED BY P.L.105-2010. SECTION 2. IS
25	AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) For the
26	purpose of encouraging counties to develop a coordinated local corrections-criminal justice
27	system and providing effective alternatives to imprisonment at the state level, the commissioner
28	shall, out of funds appropriated for such purposes, make grants to counties for the establishment
29	and operation of community corrections programs. Appropriations intended for this purpose ma
30	not be used by the department for any other purpose. Money appropriated to the department of
31	correction for the purpose of making grants under this chapter and any financial aid payments
32	suspended under section 6 of this chapter do not revert to the state general fund at the close of
33	any fiscal year, but remain available to the department of correction for its use in making grants
34	under this chapter.
35	(b) The commissioner shall give priority in issuing community corrections grants to
36	programs that provide alternative sentencing projects for persons with mental illness, addictive

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disorders, mental retardation, and developmental disabilities.

1	(c) The commissioner shall award financial assistance based on the proposed
2	implementation of evidence based practices or the proposed coordination of services with
3	other community supervision agencies operating in the same county.
4	(d) Before providing financial assistance under this chapter, the commissioner shall
5	consult with the judicial conference of Indiana and the division of mental health and
6	addiction:
7	(1) for the purpose of more effectively addressing the need for:
8	(A) substance abuse treatment;
9	(B) mental health services; and
10	(C) other services for offenders placed on community supervision;
3 1	and
12	(2) to avoid duplication of services.
13	(e) Mental health and substance abuse forensic treatment services shall be provided
14	by grants under this section. Evidence based treatment and recovery wraparound support
15	services shall be provided to individuals at risk of entering the criminal justice system.
16	Services provided under this section shall include:
17	(1) mental health and substance abuse treatment;
18	(2) vocational services;
19	(3) housing assistance;
20	(4) community support services;
21	(5) care coordination; and
22	(6) transportation assistance.
23	(f) Services provided under this section shall be administered or coordinated by a
24	provider certified by the division of mental health and addiction to provide mental health
25	or substance use treatment.
26	SECTION 3. IC 11-13-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27	JULY 1, 2014]: Sec. 1. (a) There is established a program of state financial aid to be used for the
28	support of court probation services. The financial aid program shall be administered by the
29	judicial conference of Indiana. Funds appropriated to the conference for purposes of this chapter
30	shall be distributed by the conference upon approval of the state budget committee: to make
31	grants to Indiana probation departments for the purposes outlined in section 2 of this
32	chapter.
33	(b) Appropriations intended for this purpose may not be used by the judicial
34	conference for any other purpose. The judicial conference may expend up to three percent
35	(3%) of the money appropriated under this chapter to provide technical assistance,
36	consultation, and training to counties and to monitor and evaluate program delivery.
37	Money appropriated to the judicial conference for the purpose of making grants under this
38	chapter does not revert to the state general fund at the close of any fiscal year, but remains

available to the judicial conference for its use in making grants under this chapter.

SECTION 4. IC 11-13-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

39

1	JULY 1, 2014]: Sec. 2. Funds appropriated under this program may be made available to any
2	court administering probation in order to finance expenditures incurred for either any of the
3	following purposes:
4	(1) Salaries for existing or new probation officer positions.
5	(2) Maintenance or establishment of administrative support services to probation
6	officers.
7	(3) Development and implementation of incentives and sanctions policies,
8	programs and services to address compliance with community supervision
9	following the schedule adopted by the judicial conference of Indiana under
10	IC 11-13-1-8.
11	(4) Development and use of evidence based services, programs and practices
12	that reduce probationers' risk for recidivism.
13	(5) Establishment of a coordinated system of community supervision to
14	improve the efficiency and coordination of offender services within a
15	county.
16	SECTION 5. IC 11-13-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17	JULY 1, 2014]: Sec. 3. (a) State financial aid for support of probation services may be made only
18	to courts meeting the minimum standards adopted by the judicial conference of Indiana and may
19	not exceed fifty percent (50%) of the cost of the positions or services being financed. Any court
20	having probation jurisdiction may apply for financial assistance under this chapter by submitting
21	an application to the conference for review. The application shall be accompanied by detailed
22	plans regarding the use of the financial aid.
23	(b) The judicial conference shall develop a plan for the application process and the
24	funding requirements for courts seeking aid. The conference may recommend changes or
25	modifications necessary to effect compliance with the minimum standards. The conference and
26	the state budget committee must approve all financial aid granted under this chapter. Any court
27	receiving financial assistance under this chapter may be declared ineligible to receive that
28	assistance if the court fails to maintain the minimum standards.
29	(c) Two (2) or more courts may jointly apply for financial assistance under this chapter.
30	(d) The conference shall award financial assistance based on the proposed
31	implementation of evidence based practices or the proposed coordination of services with
32	other community supervision agencies operating in the same county.
33	(e) Before providing financial assistance under this chapter, the judicial conference
34	of Indiana shall consult with the department of correction and division of mental health
35	and addiction:
36	(1) for the purpose of more effectively addressing the need for:
37	(A) substance abuse treatment;
38	(B) mental health services; and
39	(C) other services for offenders placed on community supervision;
40	and

1	(2) to avoid duplication of services.
2	(f) Mental health and substance use treatm

(f) Mental health and substance use treatment services provided by grants under this section shall be provided by a provider certified by the division of mental health and addiction to provide mental health or substance use treatment.

4 5 6

Exhibit 7 . CLSP - 10/31/13



PRELIMINARY DRAFT No. 3193

PREPARED BY LEGISLATIVE SERVICES AGENCY 2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 35-50-2.

Synopsis: Felony penalties. Changes the sentencing ranges for the

felony levels.

Effective: July 1, 2014.



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 35-50-2-1, AS AMENDED BY P.L.158-2013,

2	SECTION 652, IS AMENDED TO READ AS FOLLOWS
3	[EFFECTIVE JULY 1, 2014]: Sec. 1. (a) As used in this chapter.
4	"Level 6 felony conviction" means:
5	(1) a conviction in Indiana for:
6	(A) a Class D felony, for a crime committed before July 1.
7	2014; or
8	(B) a Level 6 felony, for a crime committed after June 30
9	2014: and
0	(2) a conviction, in any other jurisdiction at any time, with respect
1	to which the convicted person might have been imprisoned for
2	more than one (1) year.
3	However, the term does not include a conviction with respect to which
4	the person has been pardoned, or a conviction of a Class A
5	misdemeanor entered under IC 35-38-1-1.5 or section 7(c) or 7(d) of
6	this chapter.
7	(b) As used in this chapter, "felony conviction" means a conviction
8	in any jurisdiction at any time, with respect to which the convicted
9	person might have been imprisoned for more than one (1) year.
20	However, it does not include a conviction with respect to which the
1	person has been pardoned, or a conviction of a Class A misdemeanor
22	under section 7(c) of this chapter.
23	(c) As used in this chapter. "minimum sentence" means:
!3 !4	(1) for murder, forty-five (45) years (for a crime committed
25	before July 1, 2014) and thirty (30) years (for a crime
26	committed after June 30, 2014);
:7	(2) for a Class A felony, for a crime committed before July 1,
8.	2014. twenty (20) years;
9	(3) for a Class B felony, for a crime committed before July 1.
0	2014, six (6) years;
l	(4) for a Class C felony, for a crime committed before July 1,



1	2014. two (2) years:
2	(5) for a Class D felony, for a crime committed before July 1.
3	2014. one-half (1/2) year:
4	(6) for a Level 1 felony, for a crime committed after June 30.
5	2014, twenty (20) fifteen (15) years:
6	(7) for a Level 2 felony, for a crime committed after June 30.
7	2014, ten (10) years;
8	(8) for a Level 3 felony, for a crime committed after June 30.
9	2014. three (3) four (4) years:
10	(9) for a Level 4 felony, for a crime committed after June 30.
11	2014. two (2) years:
12	(10) for a Level 5 felony, for a crime committed after June 30.
13	2014, one (1) year; and
14	(11) for a Level 6 felony, for a crime committed after June 30.
15	2014, one-half (1/2) year.
16	SECTION 2. IC 35-50-2-3, AS AMENDED BY P.L.99-2007.
17	SECTION 212, IS AMENDED TO READ AS FOLLOWS
18	[EFFECTIVE JULY 1, 2014]: Sec. 3. (a) A person who commits
19	murder before July 1, 2014, shall be imprisoned for a fixed term of
20	between forty-five (45) and sixty-five (65) years, with the advisory
21	sentence being fifty-five (55) years. A person who commits murder
22	after June 30, 2014, shall be imprisoned for a fixed term of between
23	thirty (30) and fifty (50) years, with the advisory sentence being
24	forty (40) years. In addition, the person may be fined not more than
25	ten thousand dollars (\$10,000).
26	(b) Notwithstanding subsection (a), a person who was:
27	(1) at least eighteen (18) years of age at the time the murder was
28	committed may be sentenced to:
29	(A) death; or
30	(B) life imprisonment without parole; and
31	(2) at least sixteen (16) years of age but less than eighteen (18)
32	years of age at the time the murder was committed may be
33	sentenced to life imprisonment without parole;
34	under section 9 of this chapter unless a court determines under
35	IC 35-36-9 that the person is an individual with mental retardation.
36	SECTION 3. IC 35-50-2-4, AS AMENDED BY P.L.158-2013.
37	SECTION 655, IS AMENDED TO READ AS FOLLOWS
38	[EFFECTIVE JULY 1, 2014]: Sec. 4. A person who commits a Class
39	A felony (for a crime committed before July 1, 2014) or a Level 1
40	felony (for a crime committed after June 30, 2014) shall be imprisoned
41	for a fixed term of between twenty (20) fifteen (15) and fifty (50)
42	thirty-five (35) years. with the advisory sentence being thirty (30)
43	twenty-five (25) years. In addition, the person may be fined not more
44	than ten thousand dollars (\$10,000).
45	SECTION 4. IC 35-50-2-4.5, AS ADDED BY P.L.158-2013,

SECTION 656. IS AMENDED TO READ AS FOLLOWS



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[EFFECTIVE JULY 1, 2014]: Sec. 4.5. A person who commits a Level 2 felony shall be imprisoned for a fixed term of between ten (10) and thirty (30) twenty-five (25) years, with the advisory sentence being seventeen and one-half (17 1/2) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

SECTION 5. IC 35-50-2-5. AS AMENDED BY P.L.158-2013. SECTION 657. IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. (a) A person who commits a Class B felony (for a crime committed before July 1, 2014) shall be imprisoned for a fixed term of between six (6) and twenty (20) years. with the advisory sentence being ten (10) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(b) A person who commits a Level 3 felony (for a crime committed after June 30. 2014) shall be imprisoned for a fixed term of between three (3) four (4) and twenty (20) fourteen (14) years, with the advisory sentence being six (6) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

SECTION 6. IC 35-50-2-5.5, AS ADDED BY P.L.158-2013. SECTION 658. IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1.2014]: Sec. 5.5. A person who commits a Level 4 felony shall be imprisoned for a fixed term of between two (2) and twelve (12) ten (10) years. with the advisory sentence being four (4) years. In addition, the person may be fined not more than ten thousand dollars (\$10.000).

SECTION 7. IC 35-50-2-6, AS AMENDED BY P.L.158-2013, SECTION 659. IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1. 2014]: Sec. 6. (a) A person who commits a Class C felony (for a crime committed before July 1, 2014) shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

- (b) Notwithstanding subsection (a), if a person has committed nonsupport of a child as a Class C felony under IC 35-46-1-5 (for a crime committed before July 1, 2014), upon motion of the prosecuting attorney, the court may enter judgment of conviction of a Class D felony under IC 35-46-1-5 and sentence the person accordingly. The court shall enter in the record detailed reasons for the court's action when the court enters a judgment of conviction of a Class D felony under this subsection.
- (c) A person who commits a Level 5 felony (for a crime committed after June 30. 2014) shall be imprisoned for a fixed term of between one (1) and six (6) five (5) years. with the advisory sentence being two (2) years. In addition, the person may be fined not more than ten thousand dollars (\$10.000).
- (d) Notwithstanding subsection (c), if a person has committed nonsupport of a child as a Level 5 felony under IC 35-46-1-5 (for a

crime committed after June 30, 2014), upon motion of the prosecuting attorney, the court may enter judgment of conviction of a Level 6 felony under IC 35-46-1-5 and sentence the person accordingly. The court shall enter in the record detailed reasons for the court's action when the court enters a judgment of conviction of a Level 6 felony under this subsection.

SECTION 8. IC 35-50-2-7. AS AMENDED BY P.L.159-2013, SECTION 5, AND AS AMENDED BY P.L.158-2013, SECTION 660, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 7. (a) A person who commits a Class D felony (for a crime committed before July 1, 2014) shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 1/2) years. In addition, the person may be fined not more than ten thousand dollars (\$10.000).

- (b) A person who commits a Level 6 felony (for a crime committed after June 30, 2014) shall be imprisoned for a fixed term of between six (6) months and two and one-half (2 1/2) (2) years, with the advisory sentence being one (1) year. In addition, the person may be fined not more than ten thousand dollars (\$10,000).
- (c) Notwithstanding subsection subsections (a) and (b), if a person has committed a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014), the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly. However, the court shall enter a judgment of conviction of a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014) if:
 - (1) the court finds that:

- (A) the person has committed a prior, unrelated felony for which judgment was entered as a conviction of a Class A misdemeanor; and
- (B) the prior felony was committed less than three (3) years before the second felony was committed;
- (2) the offense is domestic battery as a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014) under IC 35-42-2-1.3: or
- (3) the offense is possession of child pornography (IC 35-42-4-4(c)).

The court shall enter in the record, in detail, the reason for its action whenever it exercises the power to enter judgment of conviction of a Class A misdemeanor granted in this subsection.

(c) (d) Notwithstanding subsection subsections (a) and (b). the sentencing court may convert a Class D felony conviction (for a crime committed before July 1, 2014) or a Level 6 felony conviction (for a crime committed after June 30, 2014) to a Class A misdemeanor

l	conviction if, after receiving a verified petition as described in
2	subsection td) (e) and after conducting a hearing of which the
3	prosecuting attorney has been notified, the court makes the following
4	findings:
5	(1) The person is not a sex or violent offender (as defined in
6	IC 11-8-8-5).
7	(2) The person was not convicted of a Class D felony (for a crime
8	committed before July 1, 2014) or a Level 6 felony (for a crime
9	committed after June 30, 2014) that resulted in bodily injury to
10	another person.
11	(3) The person has not been convicted of perjury under
12	IC 35-44.1-2-1 (or IC 35-44-2-1 before its repeal) or official
13	misconduct under IC 35-44.1-1-1 (or IC 35-44-1-2 before its
14	repeal).
15	(4) At least three (3) years have passed since the person:
16	(A) completed the person's sentence; and
17	(B) satisfied any other obligation imposed on the person as
18	part of the sentence;
19	for the Class D or Level 6 felony.
20	(5) The person has not been convicted of a felony since the
21	person:
22	(A) completed the person's sentence; and
23	(B) satisfied any other obligation imposed on the person as
24	part of the sentence;
25	for the Class D or Level 6 felony.
26	(6) No criminal charges are pending against the person.
27	(d) (e) A petition filed under subsection subsections (c) (d) or (e) (f)
28	must be verified and set forth:
29	(1) the crime the person has been convicted of;
30	(2) the date of the conviction;
31	(3) the date the person completed the person's sentence;
32	(4) any obligations imposed on the person as part of the sentence;
33	(5) the date the obligations were satisfied; and
34	(6) a verified statement that there are no criminal charges pending
35	against the person.
36	(f) If a person whose Class D or Level 6 felony conviction has
37	been converted to a Class A misdemeanor conviction under subsection
38	(c) (d) is convicted of a felony within not later than five (5) years after
39	the conversion under subsection (c), (d), a prosecuting attorney may
40	petition a court to convert the person's Class A misdemeanor
41	conviction back to a Class D felony conviction (for a crime committed
42	before July 1, 2014) or a Level 6 felony conviction (for a crime



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committed after June 30, 2014).

:Xhibit 8 -CLSP 10/21/13

Indiana Criminal Code Revision Sentence Ranges

(Recommendation of IPDC in PD 3193)

	1			1
Class/Level Felony	Sentence Range (yrs.)	Advisory Sentence	Time Served After Good Time Credit	
Murder	45 -65	55	22.5 -32.5	Current
Murder	45 -65	55	33.75 -48.75	HEA 1006
Murder	30 -50	40	22.5 -37.5	Recommended
Class A	20 -50	30	10 -25	Current
Level 1	20 -50	30	15 -37.5	HEA 1006
Level 1	15 -35	25	11.25 -26.25	Recommended
Class A	20 -50	30	10 -25	Current
Level 2	10 -30	17.5	7.5 -22.5	HEA 1006
Level 2	10 -25	17.5	7.5 -18.8	Recommended
Class B	6 -20	10	3 -10	Current
Level 3	3 -20	6	2.25 -15	HEA 1006
Level 3	4 -14	- 6	3 -11	Recommended
Clara B	C 20	1:0	2 10	To
Class B	6 -20	10 4	3 -10	Current
Level 4	2 -12		1.5 -9	HEA 1006
Level 4	2 -10	4	1.5 -7.5	Recommended
Class C	2 -8	4	1 -4	Current
Level 5	1 -6	2	0.75 -4.5	HEA 1006
Level 5	1-5	2	0.75 -3:8	Recommended
Class D	0.5 -3	1.5	.25 -1.5	Current
	0.5 -3	1.5	0.38 -1.88	
Level 6	40. 4 5.41 1.14		_	HEA 1006
Level 6	0.5 -2	1	0.38 -1.5	Recommended

Indiana Criminal Code Revision Sentence Ranges

(Recommendation of IPDC in PD 3193)

Current Law					
Class	Range (yrs.)	Advisory	Time Served @ 50% Credit Time		
Murder	45 -65	55	22.5-32.5		
Α	20 -50	30	10-25		
А	20 -50	30	10-25		
В	6 -20	10	3-10		
В	6 -20	10	3-10		
С	2 -8	4	1-4		
D	0.5 -3	1.5	.25-1.5		

	HE	A 1006	
Level	Range (yrs.)	Advisory	Time Served @ 25% Credit Time
Murder	45 -65	55	33.75 -48.75
1	20 -50	30	15 -37.5
2	10 -30	17,5	7.5 -22.5
3	3 -20	6	2.25 -15
4	2 -12	4	1.5 -9
5	1 -6	2	0.75 -4.5
6	0.5 -2.5	ì	0.38 -1.88

	IPDC Reco	mmend	ation
Level	Range (yrs.)	Advisory	Time Served @ 25% Credit Time
	30~-50	40	22.5 -37.5
1 2	15 -35 10 -25		7.5 -18.8
3	4 -14	6	3 -10.5
<u>4</u> 5	2 -10 1 -5	2	1.5 -7.5 0.75 -3.8
6	0.5 -2	1	0.38 -1.5

Exhibit 9

-CLSP- 10/31/13

PRELIMINARY DRAFT No. 3175

PREPARED BY LEGISLATIVE SERVICES AGENCY 2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 35-38-1-17.

Synopsis: Reduction or suspension of sentences. Provides that, within 365 days after: (1) a convicted person begins serving the person's sentence; (2) a hearing is held at which the convicted person is present and of which the prosecuting attorney has been notified; and (3) the court obtains a report from the department of correction concerning the convicted person's conduct while imprisoned; the court may reduce or suspend the person's sentence. Provides that, if more than 365 days have elapsed since the convicted person began serving the sentence and after a hearing at which the convicted person is present, the court may reduce or suspend the sentence, subject to the approval of the prosecuting attorney.

Effective: July 1, 2014.





A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

]	SECTION 1. IC 35-38-1-17, AS AMENDED BY P.L.158-2013,
2	SECTION 396, IS AMENDED TO READ AS FOLLOWS
3	[EFFECTIVE JULY 1, 2014]: Sec. 17. (a) At any time Within three
4	hundred sixty-five (365) days after:
5	(1) a convicted person begins serving the person's sentence;
6	(2) a hearing is held:
7	(A) at which the convicted person is present; and
8	(B) of which the prosecuting attorney has been notified; and
9	(3) the court obtains a report from the department of correction
10	concerning the convicted person's conduct while imprisoned;
11	the court may reduce or suspend the sentence. and impose a sentence
12	that the court was authorized to impose at the time of sentencing. The
13	court must incorporate its reasons in the record.
14	(b) If more than three hundred sixty-five (365) days have
15	elapsed since the convicted person began serving the sentence and
16	after a hearing at which the convicted person is present, the court
17	may reduce or suspend the sentence, subject to the approval of the
18	prosecuting attorney. However, if in a sentencing hearing for a
19	convicted person conducted after June 30, 2001, the court could
20	have placed the convicted person in a community corrections

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under IC 35-38-2.6.

(b) (c) The court must give notice of the order to reduce or suspend the sentence under this section to the prosecuting attorney and the victim (as defined in IC 35-31.5-2-348) of the crime for which the convicted person is serving the sentence.

program as an alternative to commitment to the department of

correction, the court may modify the convicted person's sentence

under this section without the approval of the prosecuting attorney

to place the convicted person in a community corrections program

(c) (d) The court may suspend a sentence for a felony under this section only if suspension is permitted under IC 35-50-2-2.2.

PD 3175/DI 69+ 2014



]	(d) (e) The court may deny a request to suspend or reduce a
2	sentence under this section without making written findings and
3	conclusions.
4	(e) (f) Notwithstanding subsections (a) and (b), the court is no
5	required to conduct a hearing before reducing or suspending a sentence
6	if:
7	(1) the prosecuting attorney has filed with the court an agreemen
8	of the reduction or suspension of the sentence; and
9	(2) the convicted person has filed with the court a waiver of the
10	right to be present when the order to reduce or suspend the
11	sentence is considered.



Exhibit 10 :- CLSP - 10/31/13



PRELIMINARY DRAFT No. 3248

PREPARED BY LEGISLATIVE SERVICES AGENCY 2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 31-30-1-4; IC 35-31.5-2; IC 35-38-1-7.1; IC 35-45-9-3; IC 35-50-2.

Synopsis: Criminal gang activity. Adds criminal gang activity to potential aggravating circumstances. Repeals the criminal gang activity crime and the criminal gang activity sentence enhancement.

Effective: July 1, 2014.



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1	SECTION 1. IC 31-30-1-4, AS AMENDED BY F.L.136-2015
2	SECTION 315, AND AS AMENDED BY P.L.214-2013, SECTION
3	25, IS CORRECTED AND AMENDED TO READ AS FOLLOWS
4	[EFFECTIVE JULY 1, 2014]: Sec. 4. (a) The juvenile court does not
5	have jurisdiction over an individual for an alleged violation of:
6	(1) IC 35-41-5-1(a) (attempted murder);
7	(2) IC 35-42-1-1 (murder);
8	(3) IC 35-42-3-2 (kidnapping);
9	(4) IC 35-42-4-1 (rape);
10	(5) IC 35-42-4-2 (criminal deviate conduct) (repealed); (before
11	its repeal);
12	(6) IC 35-42-5-1 (robbery) if:
13	(A) the robbery was committed while armed with a deadly
14	weapon; or
15	(B) the robbery results in bodily injury or serious bodily
16	injury;
17	(7) IC 35-42-5-2 (carjacking) (repealed); (before its repeal);
18	(8) IC 35-45-9-3 (criminal gang activity);
19	(9) (8) IC 35-45-9-4 (criminal gang intimidation);
20	(10) (9) IC 35-47-2-1 (carrying a handgun without a license), it
21	charged as a felony;
22	(11) (10) IC 35-47-10 (children and firearms), if charged as a
23	felony;
24	(12) (11) IC 35-47-5-4.1 (dealing in a sawed-off shotgun); or
25	(13) (12) any offense that may be joined under IC 35-34-1-9(a)(2)
26	with any crime listed in subdivisions (1) through (12);
27	if the individual was at least sixteen (16) years of age at the time of the
28	alleged violation.
29	(b) The juvenile court does not have jurisdiction for an alleged
30	violation of manufacturing or dealing in cocaine or a narcotic drug
31	(IC 35-48-4-1), dealing in methamphetamine (IC 35-48-4-1.1), dealing



ì	in a schedule I, II, or III controlled substance (IC 35-48-4-2), or dealing
2	in a schedule IV controlled substance (IC 35-48-4-3), if:
3	(1) the individual has a prior unrelated conviction under
4	IC 35-48-4-1, IC 35-48-4-1.1, IC 35-48-4-2, or IC 35-48-4-3; or
5	(2) the individual has a prior unrelated juvenile adjudication that,
6	if committed by an adult, would be a crime under IC 35-48-4-1.
7	IC 35-48-4-1.1, IC 35-48-4-2, or IC 35-48-4-3;
8	and the individual was at least sixteen (16) years of age at the time of
.9	the alleged violation.
10	(c) Once an individual described in subsection (a) or (b) has been
11	charged with any crime listed in subsection (a) or (b), the court having
12	adult criminal jurisdiction shall retain jurisdiction over the case even
13	if the individual pleads guilty to or is convicted of a lesser included
14	offense. A plea of guilty to or a conviction of a lesser included offense
15	does not vest jurisdiction in the juvenile court.
16	SECTION 2. IC 35-31.5-2-27.4 IS REPEALED [EFFECTIVE JULY
17	1, 2014]. Sec. 27.4: "Benefit; promote; or further the interests of a
18	criminal gang". for purposes of IC 35-45-9-3, has the meaning set forth
19	in IC 35-45-9-3(a).
20	SECTION 3. IC 35-31.5-2-74, AS ADDED BY P.L.114-2012.
21	SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22	JULY 1, 2014]: Sec. 74. (a) "Criminal gang", for purposes of
23	IC 35-45-9, has the meaning set forth in IC 35-45-9-1.
24	(b) "Criminal gang", for purposes of IC 35-50-2-15, has the meaning
25	set forth in IC 35-50-2-1.4.
26	SECTION 4. IC 35-31.5-2-264.5 IS REPEALED [EFFECTIVE
27	JULY 1, 2014]. Sec: 264.5: "Purpose of increasing a person's own
28	standing or position within a criminal gang", for purposes of
29	IC 35-45-9-3, has the meaning set forth in IC 35-45-9-3(b).
30	SECTION 5. IC 35-38-1-7.1, AS AMENDED BY P.L.126-2012,
31	SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
32	JULY 1, 2014]: Sec. 7.1. (a) In determining what sentence to impose
33	for a crime, the court may consider the following aggravating
34	circumstances:
35	(1) The harm, injury, loss, or damage suffered by the victim of an
36	offense was:
37	(A) significant; and
38	(B) greater than the elements necessary to prove the
39	commission of the offense.
40	(2) The person has a history of criminal or delinquent behavior.
41	(3) The victim of the offense was less than twelve (12) years of
42	age or at least sixty-five (65) years of age at the time the person
43	committed the offense.
44	(4) The person:
45	(A) committed a crime of violence (IC 35-50-1-2); and

(B) knowingly committed the offense in the presence or within



1	hearing of an individual who:
2	(i) was less than eighteen (18) years of age at the time the
3	person committed the offense; and
4	(ii) is not the victim of the offense.
5	(5) The person violated a protective order issued against the
6	person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or
7	IC 34-4-5.1 before their repeal), a workplace violence restraining
8	order issued against the person under IC 34-26-6, or a no contact
9	order issued against the person.
10	(6) The person has recently violated the conditions of any
11	probation, parole, pardon, community corrections placement, or
12	pretrial release granted to the person.
13	(7) The victim of the offense was:
14	(A) a person with a disability (as defined in IC 27-7-6-12), and
15	the defendant knew or should have known that the victim was
16	a person with a disability; or
17	(B) mentally or physically infirm.
18	(8) The person was in a position having care, custody, or control
19	of the victim of the offense.
20	(9) The injury to or death of the victim of the offense was the
21	result of shaken baby syndrome (as defined in IC 16-41-40-2).
22	(10) The person threatened to harm the victim of the offense or a
23	witness if the victim or witness told anyone about the offense.
24	(11) The person:
25	(A) committed trafficking with an inmate under
26	IC 35-44.1-3-5; and
27	(B) is an employee of the penal facility.
28	(12) The person knowingly or intentionally committed an act:
29	(A) with the intent to benefit, promote, or further the
30	interests of a criminal gang; or
31	(B) for the purpose of increasing the person's own standing
32	or position within a criminal gang.
33	(b) The court may consider the following factors as mitigating
34	circumstances or as favoring suspending the sentence and imposing
35	probation:
36	(1) The crime neither caused nor threatened serious harm to
37	persons or property, or the person did not contemplate that it
38	would do so.
39	(2) The crime was the result of circumstances unlikely to recur.
10	(3) The victim of the crime induced or facilitated the offense.
11	(4) There are substantial grounds tending to excuse or justify the
12	crime, though failing to establish a defense.
13	(5) The person acted under strong provocation.
14 15	(6) The person has no history of delinquency or criminal activity,
15	or the person has led a law-abiding life for a substantial period
16	before commission of the crime.



i	(7) The person is likely to respond affirmatively to probation o
2	short term imprisonment.
3	(8) The character and attitudes of the person indicate that the
4	person is unlikely to commit another crime.
5	(9) The person has made or will make restitution to the victim o
6	the crime for the injury. damage, or loss sustained.
7	(10) Imprisonment of the person will result in undue hardship to
8	the person or the dependents of the person.
9	(11) The person was convicted of a crime involving the use o
10	force against a person who had repeatedly inflicted physical or
11	sexual abuse upon the convicted person and evidence shows tha
12	the convicted person suffered from the effects of battery as a
13	result of the past course of conduct of the individual who is the
14	victim of the crime for which the person was convicted.
15	(c) The criteria listed in subsections (a) and (b) do not limit the
16	matters that the court may consider in determining the sentence.
17	(d) A court may impose any sentence that is:
18	(1) authorized by statute; and
19	(2) permissible under the Constitution of the State of Indiana;
20	regardless of the presence or absence of aggravating circumstances of
21	mitigating circumstances.
22	SECTION 6. IC 35-45-9-3 IS REPEALED [EFFECTIVE JULY 1
23	2014]. Sec. 3. (a) As used in this section, "benefit, promote, or further
24	the interests of a criminal gang" means to commit a felony or
25	misdemeanor that would cause a reasonable person to believe results
26	in:
27	(1) a benefit to a criminal gang;
28	(2) the promotion of a criminal gang; or
29	(3) furthering the interests of a criminal gang.
30	(b) As used in this section, "purpose of increasing a person's owr
31	standing or position within a criminal gang" means committing a felony
32	or misdemeanor that would cause a reasonable person to believe results
33	in increasing the person's standing or position within a criminal gang
34	(c) A person who knowingly or intentionally commits an act
35	(1) with the intent to benefit, promote, or further the interests of
36	a criminal gang; or
37	(2) for the purpose of increasing the person's own standing or
38	position within a criminal gang;
39	commits criminal gang activity, a Level 6 felony.
40	(d) In determining whether a person committed an offense under
41	this section, the trier of fact may consider a person's association with
42	a criminal gang, including, but not limited to:
43	(1) an admission of criminal gang membership by the person;
44	(2) a statement by:
45	(A) a member of the person's family;
46	(B) the person's guardian; or



1	(C) a reliable member of the criminal gang:
2	stating the person is a member of a criminal gang:
3	(3) the person having tattoos identifying the person as a member
4	of a criminal gang:
5	(4) the person having a style of dress that is particular to members
6	of a criminal gang:
7	(5) the person associating with one (1) or more members of a
8	criminal gang:
9	(6) physical evidence indicating the person is a member of a
0	criminal gang;
1	(7) an observation of the person in the company of a known
12	eriminal gang member on multiple occasions: and
13	(8) communications authored by the person indicating criminal
4	gang membership.
5	SECTION 7. IC 35-50-2-1.4 IS REPEALED [EFFECTIVE JULY
6	1, 2014]. Sec. 1.4. For purposes of section 15 of this chapter. "criminal
7	gang" means a group with at least three (3) members that specifically:
8	(1) either:
9	(A) promotes: sponsors; or assists in: or
20	(B) participates in: or
21	(2) requires as a condition of membership or continued
22	membership;
23	the commission of a felony or an act that would be a felony if
24	committed by an adult or the offense of battery (IC 35-42-2-1).
25	SECTION 8. IC 35-50-2-9, AS AMENDED BY P.L.158-2013,
26	SECTION 663, AND AS AMENDED BY P.L.214-2013, SECTION
27	45, IS CORRECTED AND AMENDED TO READ AS FOLLOWS
28	[EFFECTIVE JULY 1, 2014]: Sec. 9. (a) The state may seek either a
29	death sentence or a sentence of life imprisonment without parole for
30	murder by alleging, on a page separate from the rest of the charging
31	instrument, the existence of at least one (1) of the aggravating
32	circumstances listed in subsection (b). In the sentencing hearing after
33	a person is convicted of murder, the state must prove beyond a
34	reasonable doubt the existence of at least one (1) of the aggravating
35	circumstances alleged. However, the state may not proceed against a
86	defendant under this section if a court determines at a pretrial hearing
37	under IC 35-36-9 that the defendant is an individual with mental
88	retardation.
9	(b) The aggravating circumstances are as follows:
0	(1) The defendant committed the murder by intentionally killing
1	the victim while committing or attempting to commit any of the
2	following:
13	(A) Arson (IC 35-43-1-1).
4	(B) Burglary (IC 35-43-2-1).
5	(C) Child molesting (IC 35-42-4-3).
6	(D) Criminal deviate conduct (IC 35-42-4-2) (repealed).



]	(before its repeal).
2	(E) Kidnapping (IC 35-42-3-2).
3	(F) Rape (IC 35-42-4-1).
4	(G) Robbery (IC 35-42-5-1).
5	(H) Carjacking (IC 35-42-5-2) (repealed). (before its repeal).
6	(I) Criminal gang activity (IC 35-45-9-3).
7	(J) (I) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
8	(K) (J) Criminal confinement (IC 35-42-3-3).
9	(2) The defendant committed the murder by the unlawful
10	detonation of an explosive with intent to injure a person or
11	damage property.
12	(3) The defendant committed the murder by lying in wait.
13	(4) The defendant who committed the murder was hired to kill.
14	(5) The defendant committed the murder by hiring another person
15	to kill.
16	(6) The victim of the murder was a corrections employee,
17	probation officer, parole officer, community corrections worker,
18	home detention officer, fireman, judge, or law enforcement
19	officer, and either:
20	(A) the victim was acting in the course of duty; or
21	(B) the murder was motivated by an act the victim performed
22	while acting in the course of duty.
23	(7) The defendant has been convicted of another murder.
24	(8) The defendant has committed another murder, at any time,
25	regardless of whether the defendant has been convicted of that
26	other murder.
27	(9) The defendant was:
28	(A) under the custody of the department of correction;
29	(B) under the custody of a county sheriff;
30	(C) on probation after receiving a sentence for the commission
31	of a felony; or
32	(D) on parole;
33	at the time the murder was committed.
34	(10) The defendant dismembered the victim.
35	(11) The defendant burned, mutilated, or tortured the victim while
36	the victim was alive.
37	(12) The victim of the murder was less than twelve (12) years of
38	age.
39	(13) The victim was a victim of any of the following offenses for
40	which the defendant was convicted:
41	(A) Battery committed before July 1, 2014, as a Class D felony
42	or as a Class C felony under IC 35-42-2-1 or battery
43	committed after June 30, 2014, as a Level 6 felony, a Level 5
44	felony, or a Level 3 felony.
45	(B) Kidnapping (IC 35-42-3-2).
46	(C) Criminal confinement (IC 35-42-3-3)



]	(D) A sex crime under IC 35-42-4.
2	(14) The victim of the murder was listed by the state or known by
3	the defendant to be a witness against the defendant and the
4	defendant committed the murder with the intent to prevent the
5	person from testifying.
6	(15) The defendant committed the murder by intentionally
7	discharging a firearm (as defined in IC 35-47-1-5):
8	(A) into an inhabited dwelling; or
9	(B) from a vehicle.
10	(16) The victim of the murder was pregnant and the murder
11	resulted in the intentional killing of a fetus that has attained
12	viability (as defined in IC 16-18-2-365).
13	(c) The mitigating circumstances that may be considered under this
14	section are as follows:
15	(1) The defendant has no significant history of prior criminal
16	conduct.
17	(2) The defendant was under the influence of extreme mental or
18	emotional disturbance when the murder was committed.
19	(3) The victim was a participant in or consented to the defendant's
20	conduct.
21	(4) The defendant was an accomplice in a murder committed by
22	another person, and the defendant's participation was relatively
23	minor.
24	(5) The defendant acted under the substantial domination of
25	another person.
26	(6) The defendant's capacity to appreciate the criminality of the
27	defendant's conduct or to conform that conduct to the
28	requirements of law was substantially impaired as a result of
29	mental disease or defect or of intoxication.
30	(7) The defendant was less than eighteen (18) years of age at the
31	time the murder was committed.
32	(8) Any other circumstances appropriate for consideration.
33	(d) If the defendant was convicted of murder in a jury trial, the jury
34	shall reconvene for the sentencing hearing. If the trial was to the court,
35	or the judgment was entered on a guilty plea, the court alone shall
36	conduct the sentencing hearing. The jury or the court may consider all
37	the evidence introduced at the trial stage of the proceedings, together
38	with new evidence presented at the sentencing hearing. The court shall
39	instruct the jury concerning the statutory penalties for murder and any
40	other offenses for which the defendant was convicted, the potential for
41	consecutive or concurrent sentencing, and the availability of good time
42	credit and clemency. The court shall instruct the jury that, in order for

the jury to recommend to the court that the death penalty or life

imprisonment without parole should be imposed, the jury must find at

least one (1) aggravating circumstance beyond a reasonable doubt as

described in subsection (I) and shall provide a special verdict form for



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each aggravating circumstance alleged. The defendant may present any additional evidence relevant to:

- (1) the aggravating circumstances alleged; or
- (2) any of the mitigating circumstances listed in subsection (c).
- (e) For a defendant sentenced after June 30, 2002, except as provided by IC 35-36-9, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole, or neither, should be imposed. The jury may recommend:
 - (1) the death penalty; or

- (2) life imprisonment without parole;
- only if it makes the findings described in subsection (l). If the jury reaches a sentencing recommendation, the court shall sentence the defendant accordingly. After a court pronounces sentence, a representative of the victim's family and friends may present a statement regarding the impact of the crime on family and friends. The impact statement may be submitted in writing or given orally by the representative. The statement shall be given in the presence of the defendant.
- (f) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.
- (g) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:
 - (1) sentence the defendant to death; or
- (2) impose a term of life imprisonment without parole; only if it makes the findings described in subsection (1).
- (h) If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.
- (i) If a person sentenced to death by a court files a petition for post-conviction relief, the court, not later than ninety (90) days after the date the petition is filed, shall set a date to hold a hearing to consider the petition. If a court does not, within the ninety (90) day period, set the date to hold the hearing to consider the petition, the court's failure to set the hearing date is not a basis for additional post-conviction relief. The attorney general shall answer the petition for post-conviction relief on behalf of the state. At the request of the attorney general, a prosecuting attorney shall assist the attorney general. The court shall enter written findings of fact and conclusions of law concerning the petition not later than ninety (90) days after the date the hearing concludes. However, if the court determines that the petition is without



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merit, the court may dismiss the petition within ninety (90) days
without conducting a hearing under this subsection.
(j) A death sentence is subject to automatic review by the supreme
court. The review, which shall be heard under rules adopted by the
supreme court, shall be given priority over all other cases. The supreme
court's review must take into consideration all claims that the:
(1) conviction or sentence was in violation of the:

- - (A) Constitution of the State of Indiana: or
 - (B) Constitution of the United States:
- (2) sentencing court was without jurisdiction to impose a sentence; and
- (3) sentence:

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- (A) exceeds the maximum sentence authorized by law; or
- (B) is otherwise erroneous.

If the supreme court cannot complete its review by the date set by the sentencing court for the defendant's execution under subsection (h), the supreme court shall stay the execution of the death sentence and set a new date to carry out the defendant's execution.

- (k) A person who has been sentenced to death and who has completed state post-conviction review proceedings may file a written petition with the supreme court seeking to present new evidence challenging the person's guilt or the appropriateness of the death sentence if the person serves notice on the attorney general. The supreme court shall determine, with or without a hearing, whether the person has presented previously undiscovered evidence that undermines confidence in the conviction or the death sentence. If necessary, the supreme court may remand the case to the trial court for an evidentiary hearing to consider the new evidence and its effect on the person's conviction and death sentence. The supreme court may not make a determination in the person's favor nor make a decision to remand the case to the trial court for an evidentiary hearing without first providing the attorney general with an opportunity to be heard on the matter.
- (1) Before a sentence may be imposed under this section, the jury, in a proceeding under subsection (e), or the court, in a proceeding under subsection (g), must find that:
 - (1) the state has proved beyond a reasonable doubt that at least one (1) of the aggravating circumstances listed in subsection (b) exists; and
 - (2) any mitigating circumstances that exist are outweighed by the aggravating circumstance or circumstances.

SECTION 9. IC 35-50-2-15 IS REPEALED [EFFECTIVE JULY 1, 2014]. Sec. 15. (a) This section does not apply to an individual who is convicted of a felony offense under IC 35-45-9-3.

(b) The state may seek; on a page separate from the rest of a charging instrument, to have a person who allegedly committed a



ì	felony offense sentenced to an additional fixed term of imprisonment
2	if the state ean show beyond a reasonable doubt that the person:
3	(1) knowingly or intentionally was a member of a criminal gang
4	while committing the offense; and
5	(2) committed the felony offense:
6	(A) at the direction of or in affiliation with a criminal gang: or
7	(B) with the intent to benefit, promote, or further the interests
8	of a criminal gang, or for the purposes of increasing the
9	person's own standing or position with a criminal gang.
10	(c) If the person is convicted of the felony offense in a jury trial, the
11	jury shall reconvene to hear evidence in the enhancement hearing. If
12	the trial was to the court, or the judgment was entered on a guilty plea.
13	the court alone shall hear evidence in the enhancement hearing:
14	(d) If the jury (if the hearing is by jury) or the court (if the hearing
15	is to the court alone) finds that the state has proved beyond a
16	reasonable doubt that the person knowingly or intentionally was a
17	member of a criminal gang while committing the felony offense and
18	committed the felony offense at the direction of or in affiliation with a
19	criminal gang as described in subsection (b); the court shall:
20	(1) sentence the person to an additional fixed term of
21	imprisonment equal to the sentence imposed for the underlying
22	felony, if the person is sentenced for only one (1) felony; or
23	(2) sentence the person to an additional fixed term of
24	imprisonment equal to the longest sentence imposed for the
25	underlying felonies, if the person is being sentenced for more than
26	one (1) felony.
27	(e) A sentence imposed under this section shall run consecutively
28	to the underlying sentence.
29	(f) A term of imprisonment imposed under this section may not be
30	suspended:
31	(g) For purposes of subsection (c), evidence that a person was a
32	member of a criminal gang or committed a felony at the direction of or
33	in affiliation with a criminal gang may include the following:
34	(1) An admission of criminal gang membership by the person.
35	(2) A statement by:
36	(A) a member of the person's family;
37	(B) the person's guardian; or
38	(C) a reliable member of the criminal gang;
39	stating the person is a member of a criminal gang.
40	(3) The person having tattoos identifying the person as a member
41	of a criminal gang.
42	(4) The person having a style of dress that is particular to
43	members of a criminal gang:
44	(5) The person associating with one (1) or more members of a
45	criminal gang.
46	(6) Physical evidence indicating the person is a member of a



	criminal gang.
	(7) An observation of the person in the company of a known
}	eriminal gang member on multiple occasions.
ļ	(8) Communications authored by the person indicating crimina
i	gang membership.



Exhibit 11 - CLSP - 10/51/13



PRELIMINARY DRAFT No. 3197

PREPARED BY LEGISLATIVE SERVICES AGENCY 2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 35-48.

Synopsis: Drug offenses. Provides that "enhancing circumstance", as used to increase the penalty for certain drug offenses: (1) applies to a prior conviction committed in any jurisdiction; (2) includes a conspiracy or an attempt; (3) applies when the offense is committed within 1,000 feet of a school, park, family housing complex, or youth program center (current law is 500 feet and does not include a family housing complex or youth program center); (4) does not require that, with respect to offenses committed near a school or public park, a minor is reasonably expected to be present. Specifies that "manufacturing", for purposes of the statute prohibiting the manufacture of marijuana, applies to the production and propagation of marijuana. Increases the penalties for certain offenses involving dealing or possession of controlled substances.

Effective: July 1, 2014.



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1	SECTION 1. IC 35-48-1-10.5. AS ADDED BY P.L.158-2015
2	SECTION 619, IS AMENDED TO READ AS FOLLOWS
3	[EFFECTIVE JULY 1. 2014]: Sec. 16.5. "Enhancing circumstance"
4	means one (1) or more of the following:
5	(1) The person has a prior conviction, in any jurisdiction, fo
6	dealing in a controlled substance that is not marijuana, hashish
7	hash oil, salvia divinorum, or a synthetic drug, including ar
8	attempt or conspiracy to commit the offense.
9	(2) The person committed the offense while in possession of a
10	firearm.
11	(3) The person committed the offense:
12	(A) on a school bus; or
13	(B) in, on, or within five hundred (500) (1,000) feet of:
14	(i) school property; while a person under eighteen (18) years
15	of age was reasonably expected to be present; or
16	(ii) a public park; while a person under eighteen (18) years
17	of age was reasonably expected to be present.
18	(iii) a family housing complex; or
19	(iv) a youth program center.
20	(4) The person delivered or financed the delivery of the drug to a
21	person under eighteen (18) years of age at least three (3) years
22	junior to the person.
23	(5) The person manufactured or financed the manufacture of the
24	drug.
25	SECTION 2. IC 35-48-1-18, AS AMENDED BY P.L.158-2013
26	SECTION 620, IS AMENDED TO READ AS FOLLOWS
27	[EFFECTIVE JULY 1. 2014]: Sec. 18. "Manufacture" means: the
28	following:
29	(1) For offenses not involving marijuana; hashish; or hash oil:
30	(A) (1) the production, preparation, propagation, compounding
31	conversion, or processing of a controlled substance, either directly



2	independently by means of chemical synthesis, or by a
3	combination of extraction and chemical synthesis, and includes
4	any packaging or repackaging of the substance or labeling or
5	relabeling of its container. It does not include the preparation
6	compounding, packaging, or labeling of a controlled substance:
7	(i) (A) by a practitioner as an incident to administering or
8	dispensing of a controlled substance in the course of a
9	professional practice; or
0	(ii) (B) by a practitioner, or by the practitioner's authorized
1	agent under the practitioner's supervision, for the purpose of
2	or as an incident to, research, teaching, or chemical analysis
3	and not for sale; or
4	(B) (2) the organizing or supervising of an activity described in
5	clause (A). subdivision (1).
6	(2) For offenses involving marijuana, hashish, or hash oil:
7	(A) the preparation; compounding; conversion; or processing
8	of marijuana. hashish. or hash oil. either directly or indirectly
9	by extraction from substances of natural origin, independently
0.	by means of chemical synthesis, or by a combination of
2]	extraction and chemical synthesis, and includes any packaging
.2	or repackaging of the marijuana, hashish, or hash oil, or
23	labeling or relabeling of its container. It does not include
24	planting, growing, cultivating, or harvesting a plant, or the
25	preparation, compounding, packaging, or labeling or
26	marijuana, hashish, or hash oil:
27	(i) by a practitioner as an incident to lawfully administering
28	or dispensing of marijuana, hashish, or hash oil in the course
9	of a professional practice; or
0	(ii) by a practitioner, or by the practitioner's authorized agen
1	under the practitioner's supervision, for the purpose of, or as
2	an incident to, research, teaching, or chemical analysis and
3	not for sale; or
4	(B) the organizing or supervising of an activity described in
5	clause (A).
6	SECTION 3. IC 35-48-4-1, AS AMENDED BY P.L.158-2013
7	SECTION 622, IS AMENDED TO READ AS FOLLOWS
8	[EFFECTIVE JULY 1, 2014]: Sec. 1. (a) A person who:
9	(1) knowingly or intentionally:
0	(A) manufactures;
1	(B) finances the manufacture of;
2	(C) delivers; or
.3	(D) finances the delivery of;
4	cocaine or a narcotic drug, pure or adulterated, classified in
5	schedule I or II; or
6	(2) possesses, with intent to:



ì	(A) manufacture:
2	(B) finance the manufacture of:
3	(C) dcliver; or
4	(D) finance the delivery of;
5	cocaine or a narcotic drug, pure or adulterated, classified in
6	schedule l or ll:
7	commits dealing in cocaine or a narcotic drug, a Level 5 Level
8	felony, except as provided in subsections (b) through (d). and (c).
9	(b) The offense is a Level 4 Level 3 felony if:
10	(1) the amount of the drug involved is at least three (3) but les
11	than ten (10) grams; or
12	(2) the amount of the drug involved is less than three (3) gram
13	and an enhancing circumstance applies.
14	(c) The offense is a Level 3 Level 2 felony if:
15	(1) the amount of the drug involved is at least ten (10) but les
16	than twenty-eight (28) grams; or
17	(2) the amount of the drug involved is at least three (3) but les
18	than ten (10) grams and an enhancing circumstance applies.
19	(d) The offense is a Level 2 felony if:
20	(1) the amount of the drug involved is at least twenty-eight (28
21	grams; or
22	(2) the amount of the drug involved is at least ten (10) but les
23	than twenty-eight (28) grams and an enhancing circumstance
24	applies.
25	SECTION 4. IC 35-48-4-1.1, AS AMENDED BY P.L.158-2013
26	SECTION 623, IS AMENDED TO READ AS FOLLOWS
27	[EFFECTIVE JULY 1, 2014]: Sec. 1.1. (a) A person who:
28	(1) knowingly or intentionally:
29	(A) manufactures;
30	(B) finances the manufacture of;
31	(C) delivers; or
32	(D) finances the delivery of;
33	methamphetamine, pure or adulterated; or
34	(2) possesses, with intent to:
35	(A) manufacture;
36	(B) finance the manufacture of;
37	(C) deliver; or
38	(D) finance the delivery of;
39	methamphetamine, pure or adulterated;
40	commits dealing in methamphetamine, a Level 5 Level 4 felony, excep
4]	as provided in subsections (b) through (d).
42	(b) The offense is a Level 4 Level 3 felony if:
13	(1) the amount of the drug involved is at least three (3) but less
14	than ten (10) grams; or
1 5	(2) the amount of the drug involved is less than three (3) grams
16	and an enhancing circumstance applies



]	(c) The offense is a Level 3 Level 2 felony if:
2	(1) the amount of the drug involved is at least ten (10) but less
3	than twenty-eight (28) grams; or
4	(2) the amount of the drug involved is at least three (3) but less
5	than ten (10) grams and an enhancing circumstance applies.
6	(d) The offense is a Level 2 Level 1 felony if the person
7	manufactures the drug within one thousand (1,000) feet of a
8	dwelling.
9	(1) the amount of the drug involved is at least twenty-eight (28
0	grams;
]	(2) the amount of the drug involved is at least ten (10) but less
2	than twenty-eight (28) grams and an enhancing circumstance
3	applies; or
4	(3) the person is manufacturing the drug and the manufacture
5	results in an explosion causing serious bodily injury to a person
6	other than the manufacturer.
7	SECTION 5. IC 35-48-4-2, AS AMENDED BY P.L.158-2013
8	SECTION 624, IS AMENDED TO READ AS FOLLOWS
9	[EFFECTIVE JULY 1, 2014]: Sec. 2. (a) A person who:
20	(1) knowingly or intentionally:
1	(A) manufactures;
22	(B) finances the manufacture of;
23	(C) delivers; or
:4	(D) finances the delivery of;
:5	a controlled substance, pure or adulterated, classified in schedule
26	I, II, or III, except marijuana, hash oil, hashish, salvia, or a
27	synthetic cannabinoid drug; or
28	(2) possesses, with intent to:
:9	(A) manufacture;
0	(B) finance the manufacture of;
1	(C) deliver; or
2	(D) finance the delivery of;
3	a controlled substance, pure or adulterated, classified in schedule
4	I, II, or III, except marijuana, hash oil, hashish, salvia, or a
5	synthetic cannabinoid; drug;
6	commits dealing in a schedule I, II, or III controlled substance, a Leve
7	5 Level 4 felony, except as provided in subsections (b) through (d)
8	and (c).
9	(b) The offense is a Level 4 Level 3 felony if:
0	(1) the amount of the drug involved is at least three (3) but less
·l	than ten (10) grams; or
2	(2) the amount of the drug involved is less than three (3) grams
3	and an enhancing circumstance applies.
4	(c) The offense is a Level 3 Level 2 felony if:
5	(1) the amount of the drug involved is at least ten (10) but less
6	than twenty-eight (28) grams; or



1	(2) the amount of the drug involved is at least three (3) but less
2	than ten (10) grams and an enhancing circumstance applies.
3	(d) The offense is a Level 2 felony if:
4	(1) the amount of the drug involved is at least twenty-eight (28)
5	grams; or
6	(2) the amount of the drug involved is at least ten (10) but less
7	than twenty-eight (28) grams and an enhancing circumstance
8	applies.
9	SECTION 6. IC 35-48-4-3, AS AMENDED BY P.L.158-2013,
10	SECTION 625. IS AMENDED TO READ AS FOLLOWS
11	[EFFECTIVE JULY 1, 2014]: Sec. 3. (a) A person who:
12	(1) knowingly or intentionally:
13	(A) manufactures:
14	(B) finances the manufacture of:
15	(C) delivers; or
16	(D) finances the delivery of;
17	a controlled substance, pure or adulterated, classified in schedule
18	IV: or
19	(2) possesses, with intent to manufacture or deliver, a controlled
20	substance, pure or adulterated, classified in schedule IV;
21	commits dealing in a schedule IV controlled substance, a Level 6 Level
22	5 felony, except as provided in subsections (b) through (d): and (c).
23	(b) The offense is a Level 5 Level 4 felony if:
24	(1) the amount of the drug involved is at least three (3) but less
25	than ten (10) grams; or
26	(2) the amount of the drug involved is less than three (3) grams
27	and an enhancing circumstance applies.
28	(c) The offense is a Level 4 Level 3 felony if:
29	(1) the amount of the drug involved is at least ten (10) but less
30	than twenty-eight (28) grams; or
31	(2) the amount of the drug involved is at least three (3) but less
32	than ten (10) grams and an enhancing circumstance applies.
33	(d) The offense is a Level 3 felony if:
34	(1) the amount of the drug involved is at least twenty-eight (28)
35	grams; or
36	(2) the amount of the drug involved is at least ten (10) but less
37	than twenty-eight (28) grams and an enhancing circumstance
38	applies.
39	SECTION 7. IC 35-48-4-4, AS AMENDED BY P.L.158-2013,
40	SECTION 626, IS AMENDED TO READ AS FOLLOWS
41	[EFFECTIVE JULY 1, 2014]: Sec. 4.(a) A person who:
42	(1) knowingly or intentionally:
43	(A) manufactures;
44	(B) finances the manufacture of;
45	(C) delivers; or
46	(D) finances the delivery of;



1	a controlled substance, pure or adulterated, classified in schedule
2	V; or
3	(2) possesses, with intent to:
4	(A) manufacture;
5	(B) finance the manufacture of;
6	(C) deliver; or
7	(D) finance the delivery of;
8	a controlled substance, pure or adulterated, classified in schedule
9	V;
0	commits dealing in a schedule V controlled substance, a Class A
1	misdemeanor Level 6 felony, except as provided in subsections (b
2	through (d). and (c).
13	(b) The offense is a Level 6 Level 5 felony if:
4	(1) the amount of the drug involved is at least three (3) but less
5	than ten (10) grams; or
6	(2) the amount of the drug involved is less than three (3) grams
7	and an enhancing circumstance applies.
8	(c) The offense is a Level 5 Level 4 felony if:
9	(1) the amount of the drug involved is at least ten (10) but less
20	than twenty-eight (28) grams; or
21	(2) the amount of the drug involved is at least three (3) but less
22	than ten (10) grams and an enhancing circumstance applies.
23	(d) The offense is a Level 4 felony if:
24	(1) the amount of the drug involved is at least twenty-eight (28)
25	grams; or
26	(2) the amount of the drug involved is at least ten (10) but less
27	than twenty-eight (28) grams and an enhancing circumstance
28	applies.
29	SECTION 8. IC 35-48-4-6, AS AMENDED BY P.L.158-2013
30	SECTION 631, IS AMENDED TO READ AS FOLLOWS
31	[EFFECTIVE JULY 1, 2014]: Sec. 6. (a) A person who, without a valid
32	prescription or order of a practitioner acting in the course of the
33	practitioner's professional practice, knowingly or intentionally
34	possesses cocaine (pure or adulterated) or a narcotic drug (pure or
35	adulterated) classified in schedule I or II, commits possession or
86	cocaine or a narcotic drug, a Level 6 felony, except as provided in
37	subsections (b) through (d). and (c).
88	(b) The offense is a Level 5 felony if:
39	(1) the amount of the drug involved is at least three (3) but less
10	than ten (10) grams; or
1	(2) the amount of the drug involved is less than three (3) grams
12	and an enhancing circumstance applies.
13	(c) The offense is a Level 4 felony if:
4	(1) the amount of the drug involved is at least ten (10) but less
15	than twenty-eight (28) grams; or
6	(2) the amount of the drug involved is at least three (3) but less



]	than ten (10) grams and an enhancing circumstance applies.
2	(d) The offense is a Level 3 felony if:
3	(1) the amount of the drug involved is at least twenty-eight (28)
4	grams; or
5	(2) the amount of the drug involved is at least ten (10) but less
6	than twenty-eight (28) grams and an enhancing circumstance
7	applies.
8	SECTION 9. IC 35-48-4-6.1. AS AMENDED BY P.L.158-2013.
9	SECTION 632. IS AMENDED TO READ AS FOLLOWS
10	[EFFECTIVE JULY 1, 2014]: Sec. 6.1. (a) A person who, without a
11	valid prescription or order of a practitioner acting in the course of the
12	practitioner's professional practice, knowingly or intentionally
13	possesses methamphetamine (pure or adulterated) commits possession
14	of methamphetamine, a Level 6 felony, except as provided in
15	subsections (b) through (d). and (c).
16	(b) The offense is a Level 5 felony if:
17	(1) the amount of the drug involved is at least three (3) but less
18	than ten (10) grams; or
19	(2) the amount of the drug involved is less than three (3) grams
20	and an enhancing circumstance applies.
21	(c) The offense is a Level 4 felony if:
22	(1) the amount of the drug involved is at least ten (10) but less
23	than twenty-eight (28) grams; or
24	(2) the amount of the drug involved is at least three (3) but less
25	than ten (10) grams and an enhancing circumstance applies.
26	(d) The offense is a Level 3 felony if:
27	(1) the amount of the drug involved is more than twenty-eight
28	(28) grams; or
29	(2) the amount of the drug involved is at least ten (10) but less
30	than twenty-eight (28) grams and an enhancing circumstance
31	applies.
32	SECTION 10. IC 35-48-4-7, AS AMENDED BY P.L.158-2013,
33	SECTION 633. IS AMENDED TO READ AS FOLLOWS
34	[EFFECTIVE JULY 1, 2014]: Sec. 7. (a) A person who, without a valid
35	prescription or order of a practitioner acting in the course of the
36	practitioner's professional practice, knowingly or intentionally
37	possesses a controlled substance (pure or adulterated) classified in
38	schedule l, II, III, or IV, except marijuana, hashish, salvia, or a
39	synthetic cannabinoid drug, commits possession of a controlled
40	substance, a Class A misdemeanor Level 6 felony, except as provided
41	in subsection subsections (b) and (c).
42	(b) The offense is a Level 6 Level 5 felony if:
43	(1) the amount of the drug involved is at least three (3) but
44	less than ten (10) grams; or
45	(2) the person commits the offense and an enhancing
46	circumstance applies.



]	(c) The offense is a Level 4 felony if:
2	(1) the amount of the drug involved is at least ten (10) grams;
3	or
4	(2) the amount of the drug involved is at least three (3) but
5	less than ten (10) grams and an enhancing circumstance
6	applies.
7	(e) (d) A person who, without a valid prescription or order of a
8	practitioner acting in the course of the practitioner's professional
9	practice, knowingly or intentionally obtains:
10	(1) more than four (4) ounces of schedule V controlled substances
11	containing codeine in any given forty-eight (48) hour period
12	unless pursuant to a prescription;
13	(2) a schedule V controlled substance pursuant to written or
14	verbal misrepresentation; or
15	(3) possession of a schedule V controlled substance other than by
16	means of a prescription or by means of signing an exempt
17	narcotic register maintained by a pharmacy licensed by the
18	Indiana state board of pharmacy:
19	commits a Class A misdemeanor.
20	SECTION 11. IC 35-48-4-11, AS AMENDED BY P.L.196-2013,
21	SECTION 23, AND AS AMENDED BY P.L.158-2013, SECTION
22	638, IS CORRECTED AND AMENDED TO READ AS FOLLOWS
23	[EFFECTIVE JULY 1, 2014]: Sec. 11. (a) A person who:
24	(1) knowingly or intentionally possesses (pure or adulterated)
25	marijuana, hash oil, hashish, or salvia; or a synthetic drug;
26	(2) knowingly or intentionally grows or cultivates marijuana; or
27	(3) knowing that marijuana is growing on the person's premises,
28	fails to destroy the marijuana plants;
29	commits possession of marijuana, hash oil, hashish, or salvia, or a
30	synthetic drug, a Class A Class B misdemeanor, except as provided in
31	subsections (b) through (c). However, the offense is a Class D felony
32	if the amount involved is more than thirty (30) grams of marijuana or
33	two (2) grams of hash oil, hashish, or salvia; or a synthetic drug, or if
34	the person has a prior conviction of an offense involving marijuana,
35	hash oil, or hashish, or salvia, or a synthetic drug.
36	(b) The offense described in subsection (a) is a Class A
37	misdemeanor if the person has a prior conviction for a drug controlled
38	substance offense.
39	(c) The offense described in subsection (a) is a Level 6 felony if:
40	(1) the person has a prior conviction for a drug offense
41	controlled substance offense; and
42	(2) the person possesses:
43	(A) at least thirty (30) grams of marijuana; or
44	(B) at least two (2) grams of hash oil, hashish, or salvia. or a
45	synthetic drug.



Exhibit 12 _CLSP - 10/31/13



PRELIMINARY DRAFT No. 3179

PREPARED BY LEGISLATIVE SERVICES AGENCY 2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 35-31.5-2-121; IC 35-43-4-2; IC 35-50.

Synopsis: Consecutive sentences for crimes of violence. Allows a court to order terms of imprisonment to be served consecutively only if all the terms of imprisonment the court orders a person to serve consecutively are imposed for crimes of violence for which the person was convicted. Makes conforming amendments.

Effective: July 1, 2014.



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1	SECTION 1. IC 35-31.5-2-121, AS ADDED BY P.L.114-2012.
2	SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3	JULY 1, 2014]: Sec. 121. "Episode of criminal conduct" for purposes
4	of IC 35-50-1-2. has the meaning set forth in IC 35-50-1-2(b): means
5	offenses or a connected series of offenses that are closely related in
6	time, place, and circumstance.
7	SECTION 2. IC 35-43-4-2. AS AMENDED BY P.L.158-2013.
8	SECTION 463, IS AMENDED TO READ AS FOLLOWS
9	[EFFECTIVE JULY 1, 2014]: Sec. 2. (a) A person who knowingly or
0	intentionally exerts unauthorized control over property of another
Ţ	person, with intent to deprive the other person of any part of its value
2	or use, commits theft, a Class A misdemeanor. However, the offense is:
3	(1) a Level 6 felony if:
4	(A) the value of the property is at least seven hundred fifty
5	dollars (\$750) and less than fifty thousand dollars (\$50.000);
6	or
7	(B) the person has a prior unrelated conviction for:
8	(i) theft under this section; or
9	(ii) criminal conversion under section 3 of this chapter: and
20	(2) a Level 5 felony if:
21	(A) the value of the property is at least fifty thousand dollars
22	(\$50,000): or
23	(B) the property that is the subject of the theft is a valuable
24	metal (as defined in IC 25-37.5-1-1) and:
2.5	(i) relates to transportation safety;
26	(ii) relates to public safety: or
27	(iii) is taken from a hospital or other health care facility.
28	telecommunications provider, public utility (as defined in
29	IC 32-24-1-5.9(a)). or key facility:
30	and the absence of the property creates a substantial risk of
31	bodily injury to a person.

PD 3179/DI 69+ 2014



]	(b) In determining the value of property under this section, acts of
2	theft committed in a single episode of criminal conduct (as defined in
3	IC 35-50-1-2(b)) may be charged in a single count.
4	(c) For purposes of this section. "the value of property" means:
5	(1) the fair market value of the property at the time and place the
6	offense was committed: or
7	(2) if the fair market value of the property cannot be satisfactorily
8	determined, the cost to replace the property within a reasonable
9	time after the offense was committed.
10	A price tag or price marking on property displayed or offered for sale
11	constitutes prima facie evidence of the value of the property.
12	SECTION 3. IC 35-50-1-2, AS AMENDED BY P.L.158-2013.
13	SECTION 650. IS AMENDED TO READ AS FOLLOWS
14	[EFFECTIVE JULY 1. 2014]: Sec. 2. (a) As used in this section.
15	"crime of violence" means the following:
16	(1) Murder (IC 35-42-1-1).
17	(2) Attempted murder (IC 35-41-5-1).
18	(3) Voluntary manslaughter (IC 35-42-1-3).
19	(4) Involuntary manslaughter (IC 35-42-1-4).
20	(5) Reckless homicide (IC 35-42-1-5).
21	(6) Aggravated battery (IC 35-42-2-1.5).
22	(7) Kidnapping (IC 35-42-3-2).
23	(8) Rape (IC 35-42-4-1).
24	(9) Criminal deviate conduct (IC 35-42-4-2) (repealed).
25	(10) Child molesting (IC 35-42-4-3).
26	(11) Sexual misconduct with a minor as a Level 1 felony under
27	IC 35-42-4-9(a)(2) or a Level 2 felony under IC 35-42-4-9(b)(2).
28	(12) Robbery as a Level 2 felony or a Level 3 felony
29	(IC 35-42-5-1).
30	(13) Burglary as a Level 2 felony. Level 3 felony. or Level 4
31	felony (IC 35-43-2-1).
32	(14) Operating a vehicle while intoxicated causing death
33	(IC 9-30-5-5).
34	(15) Operating a vehicle while intoxicated causing serious bodily
35	injury to another person (IC 9-30-5-4).
36	(16) Resisting law enforcement as a felony (IC 35-44.1-3-1).
37	(b) As used in this section: "episode of criminal conduct" means
38	offenses or a connected series of offenses that are closely related in
39	time; place; and circumstance:
40	(e) (b) Except as provided in subsection (d) or (e), the court shall
41	determine whether terms of imprisonment shall be served concurrently
42	or consecutively. The court may order terms of imprisonment to be
43	served consecutively only if all the terms of imprisonment the court
44	orders a person to serve consecutively are imposed for crimes of
45	violence for which the person was convicted.
46	(c) The court may consider the:
	•

l	(1) aggravating circumstances in IC 35-38-1-7.1(a); and
2	(2) mitigating circumstances in IC 35-38-1-7.1(b):
3	in making a determination under this subsection. Section. The court
4	may order terms of imprisonment to be served consecutively even if the
5	sentences are not imposed at the same time. However, except for
6	erimes of violence: the total of the consecutive terms of imprisonment,
7	exclusive of terms of imprisonment under IC 35-50-2-8 and
8	IC 35-50-2-10 to which the defendant is sentenced for felony
9	convictions arising out of an episode of criminal conduct shall not
10	exceed the advisory sentence for a felony which is one (1) class of
11	felony higher than the most serious of the felonies for which the person
12	has been convicted.
13	(d) If, after being arrested for one (1) crime of violence a person
14	commits another crime of violence:
15	(1) before the date the person is discharged from probation,
16	parole, or a term of imprisonment imposed for the first crime of
17	violence; or
18	(2) while the person is released:
19	(A) upon the person's own recognizance: or
20	(B) on bond;
21	the terms of imprisonment for the crimes of violence shall be served
22	consecutively, regardless of the order in which the crimes of violence
23	are tried and sentences are imposed.
24	(e) If the factfinder determines under IC 35-50-2-11 that a person
25	used a firearm in the commission of the offense a crime of violence for
26	which the person was convicted, the term of imprisonment for the
27	underlying offense crime of violence and the additional term of
28	imprisonment imposed under IC 35-50-2-11 must be served
29	consecutively.
30	SECTION 4. IC 35-50-2-1.3. AS AMENDED BY P.L.178-2007.
31	SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
32	JULY 1, 2014]: Sec. 1.3. (a) For purposes of sections 3 through 7 of
33	this chapter, "advisory sentence" means a guideline sentence that the
34	court may voluntarily consider as the midpoint between the maximum
35	sentence and the minimum sentence.
36	(b) Except as provided in subsection (c), a court is not required to
37	use an advisory sentence.
38	(c) In imposing:
39	(1) consecutive sentences for felony convictions that are not
40	crimes of violence (as defined in IC 35-50-1-2(a)) arising out of
41	an episode of criminal conduct; in accordance with IC 35-50-1-2;
42	(2) (1) an additional fixed term to an habitual offender under
43	section 8 of this chapter; or
44	(3) (2) an additional fixed term to a repeat sexual offender under
45	section 14 of this chapter;

a court is required to use the appropriate advisory sentence in imposing



2014

46

1	a consecutive sentence or an additional fixed term. However, the court
2	is not required to use the advisory sentence in imposing the sentence
3	for the underlying offense.

for the underlying offense.

(d) This section does not require a court to use an advisory sentence in imposing consecutive sentences for felony convictions that do not arise out of an episode of criminal conduct.



Exhibit 13 -CLSP - 10/31/13



PRELIMINARY DRAFT No. 3198

PREPARED BY LEGISLATIVE SERVICES AGENCY 2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 35-50-2-2.2.

Synopsis: Suspended sentences. Increases the number of crimes that

are nonsuspendible.

Effective: July 1, 2014.



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1	SECTION 1. IC 35-50-2-2.2. AS ADDED BY P.L.158-2013
2	SECTION 654, IS AMENDED TO READ AS FOLLOWS
3	[EFFECTIVE JULY 1, 2014]: Sec. 2.2. (a) Except as provided in
4	subsection subsections (b) or (c) through (d), the court may suspend
5	any part of a sentence for a felony.
6	(b) If a person is convicted of a Level 1 felony or a Level 2 felony
7	or a Level 3 felony and has any prior unrelated felony conviction, the
8	court may suspend only that part of a sentence that is in excess of the
9	minimum sentence for the:
10	(1) Level 1 Level 2 felony; or
11	(2) Level 2 Level 3 felony.
12	(c) If :
13	(1) a person is convicted of a Level 4 or a Level 5 felony;
14	(2) the person has a prior unrelated felony conviction; and
15	(3) less than ten (10) years have passed since the person
16	completed the sentence imposed for the unrelated prior felon
17	conviction;
18	the court may suspend only that part of the sentence that is in
19	excess of the minimum sentence for the Level 4 or Level 5 felony
20	conviction.
-21	(d) The court may suspend only that part of a sentence for murde
22	or a Level 1 felony conviction that is in excess of the minimum
23	sentence for murder or the Level 1 felony conviction.



Exhibit 14 - CLSP - 10/31/13

Expungement draft. For discussion purposes. Version 4.

SECTION 1. IC 3-8-1-5. AS AMENDED BY P.L.37-2008. SECTION 1. IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1. 2014]: Sec. 5. (a) This section does not apply to a candidate for federal office.

- (b) As used in this section, "felony" means a conviction in any jurisdiction for which the convicted person might have been imprisoned for more than one (1) year. However, the term does not include a conviction:
 - (1) for which the person has been pardoned: or
 - (2) that has been:
 - (A) reversed:
 - (B) vacated:
 - (C) set aside: or
 - (D) not entered because the trial court did not accept the person's guilty plea: **or**
 - (E) expunged under IC 35-38-9.
 - (c) A person is disqualified from assuming or being a candidate for an elected office if:
 - (1) the person gave or offered a bribe, threat, or reward to procure the person's election, as provided in Article 2. Section 6 of the Constitution of the State of Indiana:
 - (2) the person does not comply with IC 5-8-3 because of a conviction for a violation of the federal laws listed in that statute:
 - (3) in a:
 - (A) jury trial, a jury publicly announces a verdict against the person for a felony:
 - (B) bench trial, the court publicly announces a verdict against the person for a felony; or
 - (C) guilty plea hearing, the person pleads guilty or nolo contendere to a felony:
 - (4) the person has been removed from the office the candidate seeks under Article
 - 7. Section 11 or Article 7. Section 13 of the Constitution of the State of Indiana; (5) the person is a member of the United States armed forces on active duty and
 - prohibited by the United States Department of Defense from being a candidate; or (6) the person is subject to:
 - (A) 5 U.S.C. 1502 (the Little Hatch Act): or
 - (B) 5 U.S.C. 7321-7326 (the Hatch Act);

and would violate either federal statute by becoming or remaining the candidate of a political party for nomination or election to an elected office or a political party office.

- (d) The subsequent reduction of a felony to a Class A misdemeanor under IC 35-50-2-7 or IC 35-38-1-1.5 after the:
 - (1) jury has announced its verdict against the person for a felony:
 - (2) court has announced its verdict against the person for a felony: or
- (3) person has pleaded guilty or nolo contendere to a felony; does not affect the operation of subsection (c).

SECTION 2. IC 35-38-5-1 IS REPEALED [EFFECTIVE JULY 1, 2014]. Sec. +: (a) Whenever:

- (1) an individual is arrested but no criminal charges are filed against the individual: or
- (2) all criminal charges filed against an individual are dropped because:
 - (A) of a mistaken identity:
 - (B) no offense was in fact committed: or
 - (C) there was an absence of probable cause:

the individual may petition the court for expungement of the records related to the arrest:

- (b) A petition for expungement of records must be verified and filed in the court in which the charges were filed; or if no criminal charges were filed; in a court with criminal jurisdiction in the county where the arrest occurred. The petition must set forth:
 - (1) the date of the arrest:
 - (2) the charge:
 - (3) the law enforcement agency employing the arresting officer;
 - (4) any other known identifying information; such as the name of the arresting officer, case number; or court cause number:
 - (5) the date of the petitioner's birth: and
 - (6) the petitioner's Social Security number.
- (c) A copy of the petition shall be served on the law enforcement agency and the state central repository for records.
- (d) Upon receipt of a petition for expungement, the law enforcement agency shall notify the court of the name and address of each agency to which any records related to the arrest were forwarded. The clerk shall immediately send a copy of the petition to each of those agencies. Any agency desiring to oppose the expungement shall file a notice of opposition with the court setting forth reasons for resisting the expungement along with any sworn statements from individuals who represent the agency that explain the reasons for resisting the expungement within thirty (30) days after the petition is filed. A copy of the notice of opposition and copies of any sworn statements shall be served on the petitioner in accordance with the Rules of Trial Procedure: The court shall:
 - (1) summarily grant the petition:
 - (2) set the matter for hearing: or
 - (3) summarily deny the petition, if the court determines that:
 - (A) the petition is insufficient: or
 - (B) based on information contained in sworn statements submitted by individuals who represent an agency, the petitioner is not entitled to an expungement of records.
- (c) If a notice of opposition is filed and the court does not summarily grant or summarily deny the petition, the court shall set the matter for a hearing.
- (f) After a hearing is held under this section, the petition shall be granted unless the court finds:
 - (1) the conditions in subsection (a) have not been met:
 - (2) the individual has a record of arrests other than minor traffic offenses: or
 - (3) additional criminal charges are pending against the individual.
- SECTION 3. IC 35-38-5-2 IS REPEALED [EFFECTIVE JULY 1, 2014]. Sec. 2. If the petition for expungement is granted: the law enforcement agency shall within thirty (30) days of receipt of the court order, deliver to the individual or destroy all fingerprints, photographs, or

arrest records in their possession.

SECTION 4. IC 35-38-5-3 IS REPEALED [EFFECTIVE JULY 1, 2014]. Sec. 3: Whenever the petition of an individual under section 1 of this chapter is granted; no information concerning the arrest may be placed or retained in any state central repository for criminal history information or in any other alphabetically arranged criminal history information system maintained by a local; regional; or statewide law enforcement agency. However, this chapter does not require any change or alteration in any record (such as a police blotter entry) made at the time of the arrest or in the record of any court in which the criminal charges were filed.

SECTION 5. IC 35-38-5-4 IS REPEALED [EFFECTIVE JULY 1, 2014]. Sec. 4: If a person whose records are expunged brings an action that might be defended with the contents of such records: the defendant is presumed to have a complete defense to such an action. In order for the plaintiff to recover, he must show that the contents of the expunged records would not exonerate the defendant. The plaintiff may be required to state under oath whether he had records in the criminal justice system and whether those records were expunged. If the plaintiff denies the existence of the records, the defendant may prove their existence in any manner compatible with the law of evidence.

SECTION 6. IC 35-38-9-1, AS ADDED BY P.L.159-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) This section applies only to a person who has been arrested if:

- (1) the arrest did not result in a conviction or juvenile adjudication; or
- (2) the arrest resulted in a conviction or juvenile adjudication and the conviction or adjudication was vacated on appeal.
- (b) Not earlier than one (1) year after the date of arrest, if the person was not convicted or adjudicated a delinquent child; or the date of the opinion vacating the conviction or adjudication becomes final; the person may petition the sentencing court (if the person was sentenced); the court in which the person was charged (if the person was charged); or any court exercising criminal jurisdiction in Indiana (if the person was not charged or convicted) to seal records contained in:
 - (1) a court's files:
 - (2) the files of the department of correction:
 - (3) the files of the bureau of motor vehicles:
 - (4) the files of any other person who provided treatment or services to the petitioning person under a court order: and
 - (5) the central repository for criminal history information maintained by the state police department;

that relate to the person's arrest.

- (c) A person who files a petition to seal arrest records is not required to pay a filing fee.
- (d) If the court finds by clear and convincing evidence that:
 - (1) the person's arrest:
 - (A) did not result in a conviction or juvenile adjudication; or
 - (B) resulted in a conviction or juvenile adjudication and the conviction or adjudication was vacated on appeal; and
 - (2) no charges are pending against the person;

the court shall order the arrest records described in subsection (b) sealed so that only a criminal justice agency may access the records without the order of a court.

- (a) This section applies only to a person who has been arrested if:
 - (1) the arrest did not result in a conviction or juvenile adjudication; or
 - (2) the arrest resulted in a conviction or juvenile adjudication and the conviction or adjudication was vacated on appeal.
- (b) Not earlier than one (1) year after the date of arrest, if the person was not convicted or adjudicated a delinquent child, or the date of the opinion vacating the conviction or adjudication becomes final, (unless the prosecuting attorney agrees in writing to an earlier time period), the person may petition the court for expungement of the records related to the arrest.
- (c) A petition for expungement of records must be verified and filed in the court in which the charges were filed, or if no criminal charges were filed, in a court with criminal jurisdiction in the county where the arrest occurred. The petition must set forth:
 - (1) the date of the arrest;
 - (2) the charge;
 - (3) the law enforcement agency employing the arresting officer;
 - (4) any other known identifying information, such as the name of the arresting officer, case number, or court cause number;
 - (5) the date of the petitioner's birth; and
 - (6) the petitioner's Social Security number.
- (d) A copy of the petition shall be served on the prosecuting attorney, the law enforcement agency that arrested the person, and the state central repository for records.
- (e) Upon receipt of a petition for expungement, the law enforcement agency shall notify the court of the name and address of each agency to which any records related to the arrest were forwarded. The clerk shall immediately send a copy of the petition to each of those agencies. Any agency desiring to oppose the expungement shall file a notice of opposition with the court setting forth reasons for resisting the expungement along with any sworn statements from persons who represent the agency that explain the reasons for resisting the expungement not later than thirty (30) days after the petition is filed. A copy of the notice of opposition and copies of any sworn statements shall be served on the petitioner in accordance with the Rules of Trial Procedure. The court shall:
 - (1) summarily grant the petition;
 - (2) set the matter for hearing; or
 - (3) summarily deny the petition, if the court determines that:
 - (A) the petition is insufficient; or
 - (B) based on information contained in sworn statements submitted by persons who represent an agency, the petitioner is not entitled to an expungement of records.
- (f) If a notice of opposition is filed and the court does not summarily grant or summarily deny the petition, the court shall set the matter for a hearing.
- (g) After a hearing is held under this section, the petition shall be granted unless the court finds:
 - (1) the conditions in subsection (a) have not been met; or
 - (2) criminal charges are pending against the person.
- (h) Except as provided in subsection (i), if the petition for expungement is granted, the law enforcement agency shall, not later than (30) days after receipt of the court order,

deliver to the person or destroy all fingerprints, photographs, or arrest records in their possession.

- (i) Whenever the petition of a person under this section is granted, no information concerning the arrest may be placed or retained in any state central repository for criminal history information or in any other alphabetically arranged criminal history information system maintained by a local, regional, or statewide law enforcement agency. However, this chapter does not require any change or alteration in:
 - (1) any internal record made by a law enforcement agency at the time of the arrest and not intended for release to the public;
 - (2) the record of any court in which the criminal charges were filed; or
 - (3) records that relate to a diversion or deferral program.
- (j) If a person whose records are expunged brings an action that might be defended with the contents of the expunged records, the defendant is presumed to have a complete defense to the action. In order for the plaintiff to recover, the plaintiff must show that the contents of the expunged records would not exonerate the defendant. The plaintiff may be required to state under oath whether the plaintiff had records in the criminal justice system and whether those records were expunged. If the plaintiff denies the existence of the records, the defendant may prove their existence in any manner compatible with the law of evidence.

SECTION 7. IC 35-38-9-2, AS ADDED BY P.L.159-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. (a) This section applies only to a person convicted of a misdemeanor, including a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014) reduced to a misdemeanor.

- (b) Not earlier than five (5) years after the date of conviction. (unless the prosecuting attorney consents in writing to an earlier period), the person convicted of the misdemeanor may petition the sentencing a court to expunge all conviction records, including records contained in:
 - (1) a court's files:
 - (2) the files of the department of correction:
 - (3) the files of the bureau of motor vehicles: and
 - (4) the files of any other person who provided treatment or services to the petitioning person under a court order;

that relate to the person's misdemeanor conviction.

- (c) A person who files a petition to expunge conviction records shall pay the filing fees required for filing a civil action, and the clerk shall distribute the fees as in the case of a civil action. A person who files a petition to expunge conviction records may not receive a waiver or reduction of fees upon a showing of indigency. file the petition in a circuit or superior court in the county of conviction. [Note: intent is to create an expungement specific cause number and have filing fees used to pay for a purpose yet to be determined].
 - (d) If the court finds by clear and convincing a preponderance of the evidence that:
 - (1) the period required by this section has elapsed:
 - (2) no charges are pending against the person:
 - (3) the person does not have an existing or pending driver's license suspension:
 - (4) the person has successfully completed the person's sentence, paid all fines,

fees, and court costs, including any term of supervised release: and satisfied any restitution obligation all other obligations placed on the person as part of the sentence: and

(5) the person has not been convicted of a crime within the previous five (5) years (or within the shorter period of time agreed to by the prosecuting attorney if the prosecuting attorney has consented to a shorter period of time under subsection (b)):

the court shall order the conviction records described in subsection (b) expunged in accordance with section 6 of this chapter.

SECTION 8. IC 35-38-9-3. AS ADDED BY P.L.159-2013. SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1. 2014]: Sec. 3. (a) Except as provided in subsection (b), this section applies only to a person convicted of a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014). This section does not apply to a person if the person's Class D felony or Level 6 felony was reduced to a Class A misdemeanor.

- (b) This section does not apply to the following:
 - (1) An elected official convicted of an offense while serving the official's term or as a candidate for public office.
 - (2) A sex or violent offender (as defined in IC 11-8-8-5).
 - (3) A person convicted of a felony that resulted in bodily injury to another person.
 - (4) A person convicted of perjury (IC 35-44.1-2-1) or official misconduct (IC 35-44.1-1-1).
 - (5) A person convicted of an offense described in:
 - (A) IC 35-42-1:
 - (B) IC 35-42-3.5; or
 - (C) IC 35-42-4.
- (c) Not earlier than eight (8) years after the date of conviction (unless the prosecuting attorney consents in writing to an earlier period), the person convicted of the Class D felony or Level 6 felony may petition the sentencing a court to expunge all conviction records, including records contained in:
 - (1) a court's files:
 - (2) the files of the department of correction;
 - (3) the files of the bureau of motor vehicles: and
 - (4) the files of any other person who provided treatment or services to the petitioning person under a court order;

that relate to the person's Class D or Level 6 felony conviction.

- (d) A person who files a petition to expunge conviction records shall pay the filing fees required for filing a civil action, and the clerk shall distribute the fees as in the case of a civil action. A person who files a petition to expunge conviction records may not receive a waiver or reduction of fees upon a showing of indigency. file the petition in a circuit or superior court in the county of conviction. [Note: intent is to create an expungement specific cause number and have filing fees used to pay for a purpose yet to be determined].
 - (e) If the court finds by clear and convincing a preponderance of the evidence that:
 - (1) the period required by this section has elapsed:
 - (2) no charges are pending against the person:

- (3) the person does not have an existing or pending driver's license suspension:
- (4) the person has successfully completed the person's sentence. paid all fines, fees, and court costs, including any term of supervised release: and satisfied any restitution obligation all other obligations placed on the person as part of the sentence: and
- (5) the person has not been convicted of a crime felony within the previous eight
- (8) years (or within the shorter period of time agreed to by the prosecuting attorney if the prosecuting attorney has consented to a shorter period of time under subsection (c)):

the court shall order the conviction records described in subsection (c) expunged in accordance with section 6 of this chapter.

SECTION 9. IC 35-38-9-4, AS ADDED BY P.L.159-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. (a) Except as provided in subsection (b), this section applies only to a person convicted of a felony who may not seek expungement of that felony under section 3 of this chapter.

- (b) This section does not apply to the following:
 - (1) An elected official convicted of an offense while serving the official's term or as a candidate for public office.
 - (2) A sex or violent offender (as defined in IC 11-8-8-5).
 - (3) A person convicted of a felony that resulted in serious bodily injury to another person.
 - (4) A person convicted of official misconduct (IC 35-44.1-1-1).
 - (5) A person convicted of an offense described in:
 - (A) IC 35-42-1;
 - (B) IC 35-42-3.5: or
 - (C) IC 35-42-4.
- (c) Not earlier than the later of eight (8) years after the date of conviction, or three (3) years after the completion of the person's sentence, (including the completion of any term of supervised release and the satisfaction of all other obligations placed on the person as part of the sentence, (unless the prosecuting attorney consents in writing to an earlier period), the person convicted of the felony may petition the sentencing a court to expunge all conviction records. including records contained in:
 - (1) a court's files;
 - (2) the files of the department of correction;
 - (3) the files of the bureau of motor vehicles: and
 - (4) the files of any other person who provided treatment or services to the petitioning person under a court order;

that relate to the person's felony conviction.

- (d) A person who files a petition to expunge conviction records shall pay the filing fees required for filing a civil action, and the clerk shall distribute the fees as in the case of a civil action. A person who files a petition to expunge conviction records may not receive a waiver or reduction of fees upon a showing of indigency. file the petition in a circuit or superior court in the county of conviction. [Note: intent is to create an expungement specific cause number and have filing fees used to pay for a purpose yet to be determined].
 - (e) If the court finds by clear and convincing a preponderance of the evidence that:

- (1) the period required by this section has elapsed:
- (2) no charges are pending against the person;
- (3) the person does not have an existing or pending driver's license suspension:
- (4) the person has successfully completed the person's sentence, paid all fines, fees, and court costs, including any term of supervised release, and satisfied any restitution obligation all other obligations placed on the person as part of the sentence; and
- (5) the person has not been convicted of a crime felony within the previous eight
- (8) years (or within the shorter period of time agreed to by the prosecuting attorney if the prosecuting attorney has consented to a shorter period of time under subsection (c));

the court may order the conviction records described in subsection (c) marked as expunged in accordance with section 7 section 6 of this chapter. A person whose records have been ordered marked as expunged under this section is considered to have had the person's records expunged for all purposes other than the disposition of the records.

SECTION 10. IC 35-38-9-5. AS ADDED BY P.L.159-2013. SECTION 4. IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. (a) Except as provided in subsection (b), this section applies to a person convicted of a felony, including:

- (1) an elected official convicted of an offense while serving the official's term or as a candidate for public office; and
- (2) a person convicted of a felony that resulted in serious bodily injury to another person.
- (b) This section does not apply to the following:
 - (1) A sex or violent offender (as defined in IC 11-8-8-5).
 - (2) A person convicted of official misconduct (IC 35-44.1-1-1).
 - (3) A person convicted of an offense described in:
 - (A) IC 35-42-1;
 - (B) IC 35-42-3.5: or
 - (C) IC 35-42-4.
- (c) Not earlier than **the later of** ten (10) years after the **date of conviction**, **or five** (5) years after the completion of the person's sentence, (including the completion of any term of supervised release and the satisfaction of all other obligations placed on the person as part of the sentence, (unless the prosecuting attorney consents in writing to an earlier period), the person convicted of the felony may petition the sentencing a court to expunge all conviction records, including records contained in:
 - (1) a court's files:
 - (2) the files of the department of correction:
 - (3) the files of the bureau of motor vehicles; and
 - (4) the files of any other person who provided treatment or services to the petitioning person under a court order:

that relate to the person's felony conviction.

(d) A person who files a petition to expunge conviction records shall pay the filing fees required for filing a civil action, and the clerk shall distribute the fees as in the case of a civil action. A person who files a petition to expunge conviction records may not receive a waiver or reduction of fees upon a showing of indigency. file the petition in a circuit or superior court in

the county of conviction. [Note: intent is to create an expungement specific cause number and have filing fees used to pay for a purpose yet to be determined].

- (e) If the court finds by clear and convincing a preponderance of the evidence that:
 - (1) the period required by this section has elapsed;
 - (2) no charges are pending against the person;
 - (3) the person does not have an existing or pending driver's license suspension:
 - (4) the person has successfully completed the person's sentence: paid all fines, fees, and court costs, including any term of supervised release: and satisfied any restitution obligation all other obligations placed on the person as part of the sentence:
 - (5) the person has not been convicted of a crime felony within the previous ten
 - (10) years (or within the shorter period of time agreed to by the prosecuting attorney if the prosecuting attorney has consented to a shorter period of time under subsection (c)); and
 - (6) the prosecuting attorney has consented in writing to the expungement of the person's criminal records:

the court may order the conviction records described in subsection (c) marked as expunged in accordance with section 7 of this chapter. A person whose records have been ordered marked as expunged under this section is considered to have had the person's records expunged for all purposes other than the disposition of the records.

SECTION 11. IC 35-38-9-6, AS ADDED BY P.L.159-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. (a) If the court orders conviction records expunged under sections 2 through 3 4 of this chapter, the court shall do the following with respect to the specific records expunged by the court:

- (1) Order:
 - (A) the department of correction:
 - (B) the bureau of motor vehicles: and
 - (C) each:
 - (i) law enforcement agency: and
 - (ii) other person;

who incarcerated, provided treatment for, or provided other services for the person under an order of the court;

to prohibit the release of the person's records or information in the person's records to anyone without a court order, other than a law enforcement officer acting in the course of the officer's official duty.

- (2) Order the central repository for criminal history information maintained by the state police department to seal the person's expunged conviction records. Records sealed under this subdivision may be disclosed only to:
 - (A) a prosecuting attorney, if:
 - (i) authorized by a court order; and
 - (ii) needed to carry out the official duties of the prosecuting attorney;
 - (B) a defense attorney, if:
 - (i) authorized by a court order; and
 - (ii) needed to carry out the professional duties of the defense

attorney;

- (C) a probation department, if:
 - (i) authorized by a court order; and
 - (ii) necessary to prepare a presentence report.

The probation department may provide an unreducted version of the presentence report to any person authorized by law to receive a presentence report; and

- (B) (D) the Federal Bureau of Investigation and the Department of Homeland Security. if disclosure is required to comply with an agreement relating to the sharing of criminal history information.
- (3) Notify the clerk of the supreme court to seal any records in the clerk's possession that relate to the conviction.
- (b) Except as provided in subsection (c), if a petition to expunge conviction records is granted under sections 2 through 3 4 of this chapter, the records of:
 - (1) the sentencing court;
 - (2) a juvenile court:
 - (3) a court of appeals; and
 - (4) the supreme court;

concerning the person shall be permanently sealed.

- (c) If a petition to expunge conviction records is granted under sections 2 through 3 4 of this chapter with respect to the records of a person who is named as an appellant or an appellee in an opinion or memorandum decision by the supreme court or the court of appeals, the court shall:
 - (1) redact the opinion or memorandum decision as it appears on the computer gateway administered by the office of technology so that it does not include the petitioner's name (in the same manner that opinions involving juveniles are redacted); and
 - (2) provide a redacted copy of the opinion to any publisher or organization to whom the opinion or memorandum decision is provided after the date of the order of expungement.

The supreme court and court of appeals are not required to destroy or otherwise dispose of any existing copy of an opinion or memorandum decision that includes the petitioner's name.

- (d) Notwithstanding subsection (b), a prosecuting attorney may submit a written application to a court that granted an expungement petition under this chapter to gain access to any records that were permanently sealed under subsection (b), if the records are relevant in a new prosecution of the person. If a prosecuting attorney who submits a written application under this subsection shows that the records are relevant for a new prosecution of the person, the court that granted the expungement petition shall:
 - (1) order the records to be unsealed; and
 - (2) allow the prosecuting attorney who submitted the written application to have access to the records.

If a court orders records to be unsealed under this subsection, the court shall order the records to be permanently resealed at the earliest possible time after the reasons for unsealing the records cease to exist. However, if the records are admitted as evidence against the person in a new prosecution that results in the person's conviction, or are used to enhance a sentence imposed on

the person in a new prosecution, the court is not required to reseal the records.

- (e) If a person whose conviction records are expunged under section 5 of this chapter is required to register as a sex offender based on the commission of a felony which has been expunged:
 - (1) the expungement does not affect the operation of the sex offender registry web site, any person's ability to access the person's records, records required to be maintained concerning sex or violent offenders, or any registration requirement imposed on the person; and
 - (2) the expunged conviction must be clearly marked as expunged on the sex offender registry web site.

SECTION 12. IC 35-38-9-7, AS ADDED BY P.L.159-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 7. (a) This section applies only to a person who has filed a petition for expungement under section 4 or 5 of this chapter and whose records have been ordered marked as expunged.

- (b) The court records and other public records relating to the arrest, conviction, or sentence of a person whose conviction records have been marked as expunged remain public records. However, the court shall order that the records be clearly and visibly marked or identified as being expunged.
- (c) The state police department, the bureau of motor vehicles, and any other law enforcement agency in possession of records that relate to the conviction ordered to be marked as expunged shall add an entry to the person's record of arrest, conviction, or sentence in the criminal history data base stating that the record is marked as expunged.

SECTION 13. IC 35-38-9-8, AS ADDED BY P.L.159-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 8. (a) This section applies only to a petition to expunge conviction records under sections 2 through 5 of this chapter. This section does not apply to a petition to seal expunge arrest records under section 1 of this chapter.

- (b) Any person may seek an expungement under sections 2 through 5 of this chapter by filing a verified petition for expungement. The petition must include the following:
 - (1) The petitioner's full name and all other legal names or aliases by which the petitioner is or has been known.
 - (2) The petitioner's date of birth.
 - (3) The petitioner's addresses from the date of the offense to the date of the petition.
 - (4) The petitioner's records from the bureau of motor vehicles.
 - (5) The petitioner shall affirm that no criminal investigation or charges are pending against the petitioner.
 - (5) (6) The petitioner shall affirm that the petitioner has not committed another:
 - (A) crime, for a petition filed under section 2 of this chapter; or
 - (B) felony, for a petition filed under section 3 through 5 of this chapter;

within the period required for expungement.

(6) (7) The petitioner shall list all convictions and the date of the conviction, and any appeals from the conviction and the date any appellate opinion was handed down, if applicable.

- (7) (8) The petitioner shall affirm that the required period has elapsed or attach a copy of the prosecuting attorney's written consent to a shorter period.
- (8) (9) The petitioner shall describe any other petitions that the petitioner has filed under this chapter.
- (9) (10) For a petition filed under section 5 of this chapter, the petitioner shall attach a copy of the prosecuting attorney's written consent.
- (10) (11) The petitioner shall provide evidence that the petitioner has successfully completed paid all fines, fees, and court costs, and satisfied any restitution obligation placed on the person as part of the sentence. all terms of the sentence previously imposed; including:
 - (A) payment of restitution, fines, and court costs; and
 - (B) completion of any terms of probation; parole, or community corrections:
- (c) The petitioner may include any other information that the petitioner believes may assist the court.
- (d) The petitioner shall serve a copy of the petition upon the prosecuting attorney in accordance with the Indiana Rules of Trial Procedure.
- (e) The prosecuting attorney shall inform the victim of the victim's rights under IC 35-40-6. promptly forward a copy of the petition to the last known address of the victim: and inform the victim of the victim's right to be present and address the court.
- (f) The prosecuting attorney shall reply to the petition not later than thirty (30) days after receipt.
- SECTION 14. IC 35-38-9-9, AS ADDED BY P.L.159-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 9. (a) If the prosecuting attorney does not object, the court may grant the petition for expungement without a hearing.
- (b) The court may summarily deny a petition, if the petition does not meet the requirements of section 8 of this chapter, or if the statements contained in the petition demonstrate that the petitioner is not entitled to relief.
- (c) If the prosecuting attorney objects to the petition, the court shall set the matter for hearing not sooner than sixty (60) days after service of the petition on the prosecuting attorney.
- (d) A victim of the offense for which expungement is sought may submit an oral or written statement in support of or in opposition to the petition at the time of the hearing. The court shall consider the victim's statement before making its determination.
- (e) The petitioner must prove by clear and convincing a preponderance of the evidence that the facts alleged in the verified petition are true.
 - (f) (e) The grant or denial of a petition is an appealable final order.
- (g) (f) If the court grants the petition for expungement, the court shall issue an order of expungement as described in section 6 and section 7 of this chapter.
- (h) (g) This subsection applies only to a petition to expunge conviction records filed under sections 2 through 5 of this chapter. This subsection does not apply to a petition to seal expunge arrest records under section 1 of this chapter. A petitioner may seek to expunge more than one (1) conviction at the same time. The petitioner shall consolidate all convictions that the petitioner wishes to expunge from the same county in one (1) petition. A petitioner who wishes to expunge convictions from separate counties must file a petition in each county in which a

conviction was entered.

- (i) (h) This subsection applies only to a petition to expunge conviction records filed under sections 2 through 5 of this chapter. This subsection does not apply to a petition to seal expunge arrest records under section 1 of this chapter. Except as provided in subsection (j) (i) and (j), a petitioner may only file only one (1) a petition for expungement one (1) time during the petitioner's lifetime. For purposes of this subsection, all petitions for expungement filed in separate counties for offenses committed in those counties count as one (1) petition if they are filed in one (1) three hundred sixty-five (365) day period.
- (j) (i) A petitioner whose petition for expungement has been denied, on the merits; in whole or in part, may file a subsequent petition for expungement with respect to one (1) or more convictions included in the initial expungement petition that were not expunged. However, if the petition was denied due to the court's exercise of its discretion under section 4 or 5 of this chapter, a subsequent petition for expungement may only be filed not earlier than after the elapse of three (3) years following from the date on which the denial of a previous expungement petition was denied. A subsequent petition for expungement may not include any conviction that was not included in the initial expungement petition.
- (j) A court may permit a petitioner to file a subsequent petition for expungement with respect to one (1) or more convictions that were not included in the initial expungement petition only if the court finds that:
 - (1) the petitioner intended in good faith to comply with subsection (g) and
 - (2) the petitioner's failure to comply with subsection (g) and (h) was due to:
 - (A) excusable neglect; or
 - (B) circumstances beyond the petitioner's control; and
 - (3) permitting the petitioner to file a subsequent petition for expungement is in the best interests of justice.

SECTION 15. IC 35-38-9-10, AS ADDED BY P.L.159-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 10. (a) It is unlawful discrimination for any person to:

- (1) suspend:
- (2) expel;
- (3) refuse to employ;
- (4) refuse to admit;
- (5) refuse to grant or renew a license, permit, or certificate necessary to engage in any activity, occupation, or profession; or
- (6) otherwise discriminate against:

any person because of a conviction or arrest record expunged or sealed under this chapter.

- (b) The civil rights of a person whose conviction has been expunged shall be restored, including the right to vote, to hold public office, to serve as a juror, and, to the extent not prohibited by federal law, to own or possess a firearm.
- (c) In any application for employment, a license, or other right or privilege, a person may be questioned about a previous criminal record only in terms that exclude expunged convictions or arrests, such as: "Have you ever been arrested for or convicted of a crime that has not been expunged by a court?".
 - (d) A person whose record is expunged shall be treated as if the person had never been

convicted of the offense. However, upon a subsequent arrest or conviction for an unrelated offense, the prior expunged conviction:

- (1) may be considered by the court in determining the sentence imposed for the new offense:
- (2) is a prior unrelated conviction for purposes of:
 - (A) a habitual offender enhancement: and
 - (B) enhancing the new offense based on a prior conviction; and
- (3) may be admitted as evidence in the proceeding for a new offense as if the conviction had not been expunged.
- (e) Any person that discriminates against a person as described in subsection (a) commits a Class C infraction and may be held in contempt by the court issuing the order of expungement or by any other court of general jurisdiction. Any person may file a written motion of contempt to bring an alleged violation of this section to the attention of a court. In addition, the person is entitled to injunctive relief.
- (f) In any judicial or administrative proceeding alleging negligence or other fault, an order of expungement may be introduced as evidence of the person's exercise of due care in hiring, retaining, licensing, certifying, admitting to a school or program, or otherwise transacting business or engaging in activity with the person to whom the order of expungement was issued.
- (g) A conviction that has been expunged under this chapter is not admissible as evidence in an action for negligent hiring, admission, or licensure against a person or entity who relied on the order.